

Legislative Summary 2009 General Session

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Utah Prosecution Council

Statewide Association of Prosecutors

Salt Lake District Attorney's Office

Davis County Attorney's Office

Utah Attorney General's Office

The following constitutes summaries of legislation passed during the 2009 General Session of the Utah Legislature relating to criminal law and criminal procedure and to county and city government.

This publication contains summaries only, not the full text of bills. There is no substitute for reading the actual legislative language. Enrolled copies of bills passed during the 2009 General Legislative Session can be obtained by going to the Utah Legislature's web site: www.le.utah.gov. Please note that each bill number in this document is hyperlinked so that you can access the enrolled copy by clicking on the bill number. You may also call Utah Prosecution Council at (801) 366-0202, or SWAP at (801) 366-7809. Either office will be glad to e-mail or fax a bill to you.

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**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED
DURING THE 2009 GENERAL LEGISLATIVE SESSION
BECOMES EFFECTIVE ON MAY 12, 2009.**

All legislation passed during the 2009 General Legislative Session is accessible over the Internet at the web site maintained by the office of Legislative Research and General Counsel: www.le.utah.gov. Copies of enrolled bills can be down loaded from that site in a variety of formats: HTML, PDF, or WordPerfect Zipped. To down load a bill over the Internet, follow these steps.

1. Go to the web site www.le.utah.gov
2. Put your cursor on “Bills” in the left column and then;
3. Click on “Passed Bills” in the pop-up box that appears.
4. Scroll down and click on the number of the specific bill for which you are looking.
5. Locate the heading “Bill Text.” Next to “Enrolled,” under that heading, click on the format in which you wish to view and/or down load the bill.
 - HTML format is universally accepted by all web browsers but the formatting will be different than the actual bill.
 - PDF gives you the bill in exactly the same format as the original, but you need Adobe Acrobat Reader software to use PDF. That is free software which is almost certainly already loaded onto your computer. If it is not on your computer, you will probably receive a query on your screen asking whether you want to down load Adobe Acrobat Reader. If you have questions about Adobe, check with your computer person.
 - WordPerfect Zipped format also gives you the bills in original format if you use WordPerfect as your word processing software. To use it you will need to use “unzipping” software, which is also almost certainly on your computer. The advantage with this format is that, once downloaded, you can use the bill just like any other WordPerfect document. Again, if you have questions, see your computer person.
6. Once you have the bill on your screen you can read it, print it, or save it as an electronic file.

As of May 12, 2009, the effective date of most legislation passed during the 2009 general legislative session, the *ONLY* place one will be able to access an updated text of the Utah Code is on the legislative web site. To get the then current language of any code section or state constitutional provision go to: www.le.utah.gov. On the left side of the page is a column of links; move your cursor to “Utah Code/Constitution.” A small text box will pop up. Click on “Title/Chapter/Section” or on “Utah Constitution.” Links to the various titles of the Utah Code or articles of the Utah Constitution will appear. Scroll down to the title or article in which you are interested and follow the links from there. If you want to do a word search for specific text, click on “Keyword Search” and follow the instructions.

A digest of all legislation, including effective dates, an index by subject matter, an index by bill number, a listing of bills which did not pass, and other useful material is also on the

above cited legislative web page, and is published by:

The Office of Legislative Research and General Counsel
436 State Capitol Building
Salt Lake City, UT 84114

Phone: (801) 538-1032

The Utah Code 2009 Edition will contain all amendments made to the code during the 2009 General Session and any special sessions, together with a comprehensive index. It will likely become available in late summer. Utah Codes are published by both Lexis Law Publishing and Thomson-West. They can be contacted at:

<p>Lexis Law Publishing P O Box 7587 Charlottesville, VA 22906-7587</p> <p>Phone: (800) 562-1197 (toll free) Web site: http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&catId=993&id=404</p>	<p>Thomson-West Publishing Two N Central Ave - Ste 2650 Phoenix, AZ 85004</p> <p>Phone: 602-257-4207 Web site: http://west.thomson.com/store/Results.aspx?Ntx=mode+matchallpartial&Ntk=KEYWORD-SEARCH&Nty=1&N=4294967049&Ntt=utah+code&Ntpc=1&Ntpr=1</p>
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HOUSE BILLS

COUNTY SHERIFF QUALIFICATION AMENDMENTS

HB 12

Rep. Richard Greenwood

This bill provides:

- new certification requirements for county sheriffs elected after the 2008 regular general election;
- requires a person filing a declaration of candidacy for county sheriff to submit a certificate issued by the Peace Officer Standards and Training Division stating that the candidate:
 - has successfully met the standards and training requirements established for law enforcement officers in Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; and
 - has qualified to be certified as a law enforcement officer, as defined in Section 53-13-103 ;
- requires an elected county sheriff to be certified at the time of taking office as:
 - a correctional officer, as defined in Section 53-13-104 ;
 - or a correctional facility manager by having completed a correctional facility management course approved by the POST Council; and
- requires a county sheriff to remain certified as a law enforcement officer and as a correctional officer or correctional facility manager during the sheriff's term of office.

MATERIAL HARMFUL TO MINORS AMENDMENTS

HB 14

REP. SHERYL ALLEN

Davis County Attorney Troy Rawlins brought this to the attention of Representative Allen while dealing with a number of cases of juveniles sending digital images of their private parts to one another via cell phones. That practice is known as “sexting”. The juveniles - of course - never consider the ramifications of producing digital images of themselves which could be distributed worldwide and never recovered. The difficulty was finding a way to charge the youngsters in juvenile court where they could receive counseling and a wake-up call without charging them under current felony statutes. Misdemeanor provisions would allow the handling of these cases through “non-judicial” dispositions. The prospect of felony charges kept some parents from cooperating. Although the defendant’s could have been charged with lewdness or other misdemeanor charges such would require the use of some legal fiction.

The solution was to reduce penalties for offenses committed by juveniles.

Where the juvenile is sending an image to a person 18 years or older, 76-10-1204 Distributing Pornographic Material was amended to provide that violation by a person 16 or 17 years of age is a class A misdemeanor and a violation by a person younger than 16 years of age is

a class B misdemeanor.

Other language was added to the section to provide that violation by a person 18 years of age or older remains a 3rd degree felony and that a person 18 years of age or older who solicits a juvenile to engage in the conduct is guilty of a 3rd degree felony.

Where the juvenile distributes material to a minor, 76-10-1206 Dealing in Material Harmful to a Minor applies. That section was amended in the same way. A violation by a 16 or 17 year old is a class A misdemeanor while a violation by a person under 16 is a class B misdemeanor. Violation by an adult is a 3rd degree felony unless the adult has previously been convicted or adjudicated as a juvenile under that section in which case it is a 2nd degree felony.

If a defendant younger than 18 years of age has been previously convicted or adjudicated under that section each separate subsequent offense is a 3rd degree felony.

An adult who solicits a minor to violate this section is guilty of a 3rd degree felony.

ASSESSMENT AREA AMENDMENTS

HB 16

Rep. Fred Hunsaker

This bill:

- modifies definitions;
- authorizes other political subdivisions of the state, in addition to counties, cities, towns, special service districts, and local districts, to designate an assessment area and levy assessments;
- clarifies which improvements a notice of a proposed designation resolution or ordinance may make provision for;
- modifies which owners of property may file a protest to a proposed assessment area or assessment;
- modifies the conditions under which a local entity may designate an assessment area;
- modifies the conditions under which a local entity may add to a designated assessment area;
- modifies items that can be included in the levy of an assessment; modifies the possible makeup of a board of equalization for assessment purposes;
- specifies a time within which a board of equalization must mail a copy of the board's final report;
- allows local entity to publish a summary of an adopted assessment resolution or ordinance rather than the resolution or ordinance itself;
- modifies a provision relating to an amendment of an assessment resolution or ordinance that results in an increase of an assessment;
- includes capitalized interest in the items for which proceeds of bond anticipation notes may be used;
- authorizes a local entity to include interest accruing on bond anticipation notes in the cost

- of improvements;
- includes assessments in the list of items from which warrants or bond anticipation notes are to be paid; and
- modifies a provision relating to how assessment bonds are to be issued; includes interim warrants in a provision requiring the local entity to provide for the retirement of the obligation.

AMENDMENTS TO DRIVER LICENSE SANCTION REQUIREMENTS

HB 21

Rep. Richard Greenwood

This bill amends section 53-3-231 governing driver licence reinstatement for a driver previously found in actual physical control of a motor vehicle with a measurable amount of alcohol while under 21 years of age. Before this amendment, the driver could not have their driver license reinstated before meeting the condition of completing any action recommended by a local substance abuse authority or substance abuse program (meaning the usual evaluation and compliance with whatever treatment was ordered) regardless how much time had elapsed since the denial or suspension order. This bill modifies that requirement in that if five (5) years have elapsed since the order denying or suspending the driver's driver license, the driver need not complete the action(s) recommended by the local substance abuse authority or substance abuse program prior to reinstatement of their driver license.

HARBORING A RUNAWAY

HB 22

Rep. Lorie Fowlke

The bill amends the "Harboring a Runaway" statute, §62A-4a-501. It provides that a person who harbors a minor who is a runaway must provide notice to the parent or legal guardian of the minor, a youth services center or the Division of Child and Family Services within eight hours from the later of the time that the person begins providing the shelter or of the time that the person becomes aware that the minor is a runaway. If the Juvenile Court has issued a pickup order, the notice may be given to a peace officer or a detention center. The bill provides an affirmative defense to the crime of harboring a runaway if the person fails to provide the required notice due to circumstances beyond the control of the person, so long as the harborer makes the notice as soon as practicably possible.

Upon receiving notice that a runaway is being harbored, DCFS is to immediately notify the parents or guardians, unless there is reason to believe that the minor has been abused, in which case DCFS is to initiate an investigation.

Harboring a runaway in violation of the provisions of the statute is a class B misdemeanor.

CERTIFIED TAX RATE AMENDMENTS

HB 23

Rep. Fred Hunsaker

This bill impacts the calculation of a taxing entity's certified tax rate. The revenue a taxing entity collects from redemptions is included as "ad valorem property tax revenues" for purposes of calculating the taxing entity's certified tax rate. The bill requires a taxing entity's ad valorem property tax revenues budgeted for the prior year to be *decreased* by the average annual amount of revenue collected from redemptions during the prior five-year period for purposes of calculating a taxing entity's certified tax rate and it exempts a taxing entity from the notice and hearing requirements of "Truth in Taxation" for a certain amount of budgeted revenue equal to the taxing entity's five-year average of redemptions from collections.

TRAFFIC ACCIDENT CLEARING

HB 24

Rep. Eric Hutchings

A driver of a vehicle involved in a crash resulting only in property damage may move the vehicle as soon as possible off the roadway or freeway main lines, shoulders, medians, or adjacent areas to a location on an exit ramp shoulder, a frontage road, the nearest suitable cross street, or other suitable location that does not obstruct traffic. Moving the vehicle does not impact the fault analysis. Officers may move vehicles or other items blocking traffic or endangering the public. The bill also increased the property damage limit for a reportable crash from \$1,000 to \$1,500.

GUN DEALER PENALTY AMENDMENTS

HB 25

REP. CURTIS ODA

The penalty for a licensed handgun dealer who sells a firearm without the required background check is lowered from a 3rd degree felony to a class A misdemeanor. The requirement of the background check is found in 76-10-526 while the penalty is found in 76-10-527. According to the sponsor, this is all which is required by federal law.

CHILD AND VULNERABLE ADULT ENDANGERMENT PROVISION

HB 26

REP. MIKE MORLEY

The long debated meaning of the term "Exposed to" in the Child Endangerment statute is finally defined. HB 26 provides the following definition for the term:

"Exposed to" means that the child or vulnerable adult is able to access or view an unlawfully

possessed controlled substance or chemical substance, has the reasonable capacity to access drug paraphernalia or is able to smell an odor produced during or as a result of the manufacture or production of a controlled substance.”

PERSONAL PROPERTY TAX AMENDMENTS

HB 28

Rep. Craig Frank

This bill:

- provides that a county assessor may impose a penalty if a taxpayer fails to file a property tax statement on or before May 15 of the year the property tax statement is requested by the county assessor;
- requires a county assessor of a county of the first class to mail a subsequent notice to the taxpayer before imposing a penalty for failure to file a property tax statement;
- requires a county assessor to mail a subsequent notice to a taxpayer before imposing a penalty for failure to file a property tax statement if the county assessor requested the property tax statement on or after March 16 of the year the property tax statement is requested by the county assessor; and
- requires a county assessor to make an estimate of the value of property based on known facts and circumstances if a taxpayer fails to file a signed statement of the taxpayer's property.

SEX OFFENDERS' CONTACT WITH CHILDREN

HB 29

REP. RICHARD GREENWOOD

This bill creates a new Class A misdemeanor for registered sex offenders who are required to register as a result of a conviction for an offense against a child. The bill prohibits these specific offenders from soliciting a child to be in their presence or to accompanying a child under the age of 14 unless the offender has notified the child's parent that they are a sex offender and receive a note from the child's parent or guardian giving them specific permission to be in the child's presence. There are a few exceptions allowing for verbal permission, and exceptions for natural parents.

UTAH SUDDEN CARDIAC ARREST SURVIVAL ACT

HB 31

Rep. Carl Wimmer

This act provides civil suit immunity for administering CPR or using an AED. The bill also alters the AED statewide database and includes some technical requirements for the Bureau of EMS.

AMENDMENTS TO AGENCY RULE MAKING REGARDING CRIMINAL PENALTIES

HB 32

Rep. Ben Ferry

This bill repeals certain grants of administrative RULE MAKING authority to the Department of Health, the Department of Insurance, the Labor Commission, and the Department of Natural Resources that determine what conduct constitutes a criminal penalty. It reduces violations of such agencies' rules or proclamations from the current class C misdemeanor, to simple infractions, except as otherwise provided. The goal is to not have people exposed to jail terms for simple rule violations, except where federal primacy controls the violation (meaning it needs to be a misdemeanor to keep federal funding), OR where a person has violated an actual *order* - meaning they've already been put on notice through an administrative proceeding, and they violate that order, in which case it is a misdemeanor. Provides an exemption for picking up common rock or gravel from division lands if it is for noncommercial purposes and weighs less than 250 pounds. Raises the possible civil damages from \$5,000.00 to \$10,000.00.

PENALTIES FOR DESTRUCTION OF BALD EAGLE

HB 34

Rep. Roger Barrus

This legislation establishes \$1,000 as the dollar value of a Bald Eagle for the purpose of determining the penalty for its wanton destruction under §23-20-4. Thus, wanton destruction of a Bald Eagle is a 3rd degree felony. The bill also establishes \$1,000 as the suggested minimum restitution value for a bald eagle after a person has been adjudged guilty of illegal taking, illegal possession, or wanton destruction of a Bald Eagle.

VIOLENT OFFENSES AMENDMENTS

HB 37

REP. JENNIFER SEELIG

This was one of several bills which SWAP ran in behalf of a coalition of gang detectives, prosecutors and legislators. It had several components.

The gang enhancement found in 76-3-203.1 was amended. The current language for a gang enhancement on a 1st degree felony made it only 9 years to life. That no longer makes sense in light of other laws which have been changed carrying higher penalties. Under the new language a gang enhancement adds 5 years to the minimum term for the offense. For instance if the base crime carried a 5 to life, the gang enhancement would make it a 10 to life. A gang enhancement on a 1st degree murder would change the penalty from a 15 to life to a 20 to life.

The list of crimes enhanceable was also amended to add retail theft. This doesn't change a lot for law enforcement and prosecution as those crimes were already enhanceable if they were

simply charged as theft. The advantage in charging retail theft is mainly to the victim merchants. A similar change was made in the list of predicate gang offenses used to define a gang in 76-9-802.

Aggravated Murder in 76-5-202 was also modified. That section contains a list of violent crimes. If the actor previously committed or was convicted of one of those crimes then the charge is elevated from murder to aggravated murder. This bill added felony drive-by shooting to that list.

The drive-by shooting section, 76-10-508.1 Felony Discharge of a Firearm was also amended. Subsection 2 provided that if the discharge caused injury to any person it is a 2nd degree felony. This change added the word “bodily” to that section to clarify that it only means bodily injury.

SEX OFFENDER REGISTRATION AMENDMENTS

HB 41

REP. KENNETH SUMSION

Sex offenders who are no longer on probation or parole are now required to update their registration information with the local police department or sheriff’s office where they live, instead of with the Department of Corrections. The local law enforcement agencies must receive initial and annual training in order to oversee the registration.

COORDINATING MUNICIPAL AND SPECIAL DISTRICT ELECTIONS

HB 43

Rep. Keith Grover

This bill:

- provides that polling places for a local district and special service district board member election designated by a county clerk shall coincide with municipal general election polling places whenever feasible;
- repeals the requirement that separate election judges at the same polling place must be used if a local district or special service district election ballot cannot be consolidated with a municipal election ballot; and
- provides that a municipality as well as a county may be reimbursed by a local district or special service district holding an election for the costs of the election attributable to that local district or special service district.

LOCAL & SPECIAL SERVICE DISTRICT ELECTION AMENDMENTS

HB 44

Rep. Keith Grover

This bill allows local districts and special service districts to conduct elections solely by

absentee ballot, and appoint certain candidates to the board. If unopposed, a local district or special service district candidate can be appointed. The bill defines “district” and allows a district to conduct an election solely by absentee ballot. It also addresses the district’s provision of information and ballots to voters within the district; provides for the district to obtain signatures from all voters within the district from the voter or county clerk; and addresses the procedure for a district to verify each ballot received.

CRIMINAL PROCEDURE - INVESTIGATION AMENDMENTS

HB 47

REP. PAUL RAY

This was a SWAP bill recommended by the Misdemeanor Legislative Affairs Committee (MIS-LAC). It adds municipal attorneys to those prosecutors authorized under 77-22-2 to issue investigative subpoenas. It has been absurd to require deputy county or district attorneys to make application to the district courts and issue the subpoenas so that municipal prosecutors could obtain financial or telephone records for their cases. Cross-deputization has alleviated some problems but this was a much needed step.

DRIVER LICENSE AMENDMENT FOR MOTOR DRIVEN CYCLES

HB 53

Rep. Todd Kiser

This bill clarifies the definitions of vehicles which do and do not require a class D driver license and/or motorcycle endorsement to operate under section 53-3-202. Motorcycles require a class D driver license with a motorcycle endorsement. Street-legal all terrain vehicles require a class D driver license. A motor-driven cycle (which means a motorcycle, motor scooter, moped, electric assisted bicycle, motor assisted scooter, and every motorized vehicle having an engine with less than 150 cubic centimeters of displacement, or a motor which produces not more than five horsepower) requires a class D driver license and a motorcycle endorsement. However, low-power mopeds, defined at section 41-6a-102(32), and electric assisted bicycles, defined at section 41-6a-102(13), do not require a motorcycle endorsement. Motor assisted scooters, defined in section 41-6a-102(33), and electric personal assistive mobility devices, defined in section 41-6a-102(14), do not require class D driver licenses, so long as they are operated in accordance with sections 41-6a-1115 and 41-6a-1116, respectively. Be careful of the definitions applicable to section 53-3-202, which are found at section 41-6a-102.

**AMENDMENTS TO VEHICLE
REGISTRATION REQUIREMENTS**

HB 54

Rep. Francis Gibson

This bill amends section 41-1a-203 to add payment of applicable state and local sales and use taxes to the list of taxes and fees that must be paid prior to registration of a vehicle.

**AMENDMENTS TO TOURISM, RECREATION, CULTURAL,
CONVENTION, AND AIRPORT FACILITIES TAX ACT**

HB 55

Rep. Wayne Harper

This bill provides that sales of alcoholic beverages sold by a restaurant are subject to taxation within a county that imposes a tax on certain sales by a restaurant.

Effective Date: This bill has retrospective operation to January 1, 2007.

DECLARATION OF CANDIDACY AMENDMENTS

HB 56

Rep. Douglas Aagard

This bill modifies the Election Code by amending the dates for filing a declaration of candidacy for general elections. This bill amends dates for filling midterm vacancies in the office of a county or district attorney having 15 or more licensed attorneys and it changes filing a declaration of candidacy and a petition of nomination dates for officers elected during a general election from between March 7 and March 17 to between the second Friday and the third Friday in March.

**SALES AND USE TAX -
DETERMINING THE LOCATION OF CERTAIN TRANSACTIONS**

HB 58

Rep. Wayne Harper

This bill addresses the sale, lease, or rental of a service under provisions for determining the location of certain transactions if the receipt of an order and the receipt of tangible personal property or a product transferred electronically take place within the state.

SUBPOENAS FOR RECORDS IN CRIMINAL INVESTIGATIONS

HB 59

Rep. Brad Daw

This brief, but very important, bill was written to expedite investigation of sexual predators and child pornographers at the request of the Internet Crimes Against Children Task Force. The new law allows prosecutors to issue subpoenas regarding Internet information related to the investigation of a sexual offense against a minor. The bill prohibits an Internet service provider that receives the subpoena from notifying the account holder who is the subject of the subpoena about the subpoena or investigation. This new law essentially allows state and local prosecutors the same ability held by federal prosecutors in this area of the law. A recent enticement of a 14 year-old girl from Utah by a California man who had sent a bus ticket to the girl demonstrated the benefit of this bill as investigators were able to get an immediate response to a subpoena for Internet records that lead to the identification and location of the suspect in California.

LOCAL GOVERNMENT ENTITY CHANGES

HB 61

Rep. Kory Holdaway

This bill:

- modifies and clarifies the process of certifying local government changes that affect or create local government boundaries and local government name changes;
- provides a process for certifying final boundary plats for local government boundary changes;
- eliminates a requirement for municipalities to prepare articles of incorporation as part of the incorporation process and eliminates an alternative to filing articles of incorporation; modifies the duties of the lieutenant governor, county surveyors, and county recorders in the process of certifying local government boundary and name changes;
- modifies the process for a municipality to change its name;
- establishes the date of recording documents related to a boundary action as the effective date of the boundary action for purposes of assessing property affected by the boundary action;
- imposes restrictions on a local entity's imposition of property taxes, assessments, or fees until documents related to the boundary action are recorded;
- modifies the event from which the effective date of a municipal annexation or boundary adjustment is calculated;
- clarifies and makes technical changes relating to the process of consolidating counties and the process of annexing part of one county to another county;
- limits a person from filing for recording a plat that depicts a local entity's boundary as it exists as a result of a boundary action unless it complies with certain requirements;
- modifies the duties of the surveyor within the Automated Geographic Reference Center; and
- makes technical changes.

DETERRING ILLEGAL IMMIGRATION

HB 64

Rep. Brad Dee

Because of the budget issues, illegal immigration was not as “front and center” an issue as was the case during the 2008 legislative session. The issue, nonetheless, received a good deal of attention. This bill aims to “combat” violent and other major felony crimes within the state that are associated with illegal immigration and human trafficking. It:

- Authorizes the Office of the Attorney General to administer and coordinate the operations of a multi-agency strike force to deal with “major felony crimes” committed within the state and related to illegal immigration and human trafficking;
- Provides for voluntary participation in the strike force by officers of ICE and state and local law enforcement personnel “to more effectively utilize their combined skills, expertise, and resources;”
- Provides that the strike force is to focus its efforts on detecting, investigating, deterring, and eradicating violent and other major felony criminal activity related to illegal immigration and human trafficking;
- Provides for a Fraudulent Documents Identification Unit. The primary goal of the unit is the investigation, apprehension, and prosecution of individuals or entities that participate in the sale or distribution of fraudulent documents used for identification purposes and to provide specialization in fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state.

The bill appropriated \$891,000 of federal money from the American Recovery and Reinvestment Act. The money goes to CCJJ to help fund the efforts of the multi-agency task force.

Effective Date: The act has an effective date of July 1, 2009.

PUBLIC HEARINGS ON PROPERTY TAX INCREASES

HB 67

Rep. Gage Froerer

This bill:

- amends the format of the "Truth in Taxation" newspaper advertisement;
- modifies the advertisement requirements for a taxing entity when the taxing entity's public hearing is advertised by the county auditor;
- requires certain taxing entities to notify a county auditor of public hearings related to tax increases;
- requires the county auditor to compile the notices of public hearings; requires publication of the compiled information; requires certain taxing entities to provide information to taxpayers;
- provides for the payment of costs; and
- addresses the scope of the provision.

DEVELOPMENT EXACTIONS

HB 68

Rep. Patrick Painter

This bill enacts a definition of "water interest," places limitations and restrictions on a county or municipality's imposition of an exaction for a water interest and requires culinary water authorities to provide the basis for its calculations of projected water right requirements.

CHILDREN'S JUSTICE CENTER AMENDMENTS

HB 72

Rep. Lorie Fowlke

This bill changes the appointing authority from the governor to the attorney general for six members of the Advisory Board on Children's Justice, adds a licensed health professional to the board and removes the chairs of local Children's Justice Center boards from the board.

UTAH UNIFORM SECURITIES ACT MODIFICATIONS

HB 78

Rep. Jim Bird

This quite large bill is mostly civil in nature. The main thing it does is establish the new Securities Commission, replacing the old Securities Advisory Board. There are many pages of stuff relating to the duties of the new commission and to securities regulation.

In regard to prosecutions, the bill does not change the existing 3rd degree felony provisions for violations of the chapter (Chapter 61) nor the existing 2nd and 3rd degree penalties for specific violations, depending on the value of the property or money that was unlawfully obtained. It provides that the new Securities Commission may refer cases to either the Attorney General or the appropriate county or district attorney for prosecution. A newly enacted provision provides that the attorney general or a county or district attorney in the appropriate jurisdiction may institute a criminal proceeding under this chapter, with or without referral from the Division of Securities.

IDENTITY THEFT AMENDMENTS

HB 87

Rep. Julie Fisher

Adds employment to possible identity fraud violation: "Knowingly or intentionally uses, or attempts to use that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information."

ABORTION LAW AMENDMENTS

HB 90

REP. PAUL RAY

HB 90 makes several significant changes to Utah's abortion law. Most significantly, it changes the definition of viability from 90 days after the commencement of a pregnancy to mean that "the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty." It provides that post viability abortions can be legally performed if the abortion is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of the woman, the fetus has a defect that is lethal, or the woman is pregnant as a result of rape, rape of a child, or incest.

The bill increases the penalty for an individual performing an unlawful abortion from a third degree to a second degree felony and renames the crime "killing an unborn child." The bill specifies that, while the person performing the abortion is criminally responsible, the woman seeking to have the abortion is not.

REQUIREMENT TO WEAR HUNTER ORANGE AMENDMENTS

HB 92

Rep. Stephen Sandstrom

This bill simply provides that a person is not required to wear hunter orange during the following types of hunts, unless a center-fire rifle hunt (pretty much, the general deer and/or elk hunt) is in progress in the same area:

- archery;
- muzzle-loader;
- mountain goat;
- bighorn sheep;
- bison; or
- moose; or
- as provided by a rule of the Wildlife Board.

SEXUAL EXPLOITATION OF A MINOR

HB 97

Rep. Ron Bigelow

Amends sexual exploitation of a minor to include the act of "intentionally distributing or viewing" child pornography. Previously a violation could only be found when a person intentionally possessed the child pornography. The goal of this bill is to address a common defense: "Hey, that's not my computer - I was just looking at the child porn on it!" The bill also adds exemption language for a law enforcement officer that is *acting within the scope of a criminal investigation* or of an employee of an entity who is *acting within the scope of their employment* while trying to detect or prevent child pornography at the workplace.

DEPARTMENT OF CORRECTIONS - TRACKING AND REIMBURSEMENT OF INDIVIDUAL PRISONER COSTS

HB 100

Rep. Carl Wimmer

This bill:

- modifies uncodified intent language passed in 2008 regarding financial obligations of inmates;
- requires an inmate participating in post secondary education through the Department of Corrections to pay to the institution providing the education the costs of reasonable tuition;
- requires a defendant, unless otherwise ordered by the court, to pay restitution to the state or county for medical and dental expenses incurred before and after sentencing if:
 - the defendant is convicted of criminal activity that results in incarceration in a state correctional facility or a county correctional facility through a contract with the Department of Corrections; and
 - reimbursement does not duplicate the reimbursement provided under Section 64-13-30.
- limits post secondary education services to an inmate who is lawfully present in the United States;
- provides that the department or institution providing the medical, dental, or educational services may defer an offender's payment but must turn over any unpaid debt to the Office of State Debt Collection when the offender is released from parole; and
- provides that the court may use existing criteria to reduce or exempt a recipient inmate from the debt but must enter the reason for its order on the record.

FALSE VEHICLE & TITLE REGISTRATION PENALTIES

HB 102

Rep. Paul Ray

What started as a simple bill meant to fix a problematic conjunction between phrases in the statute (from an “and” to an “or”) resulted in a change to the level of offense, from a second degree felony, all the way down to a class A (at one point during the session), but luckily brought back up to a third degree felony in the end. So, a violation will now be a third degree rather than a second.

DRIVER LICENSE HEARING AMENDMENTS LOCATION IN ADJACENT COUNTY AUTHORIZED

HB 104

Rep. Richard Greenwood

This bill amends sections 41-6a-521, 53-3-223, 53-3-231 and 53-3-418 and authorizes the Driver License Division to hold a suspension or revocation hearing in a county adjacent to the county in which notice of intent to suspend or revoke was given after an arrest for a DUI-related offense with or without the consent of the arrested person. Hearings may still be held in the county

in which notice was given, or, if both the division and the arrested person agree, in some other county.

FINANCIAL TRANSACTION CARD OFFENSES

HB 110

Rep. Julie fisher

This is the latest salvo from the state in the never ending attempt to stay ahead of, or at least close to even with those who try to make their living by fraudulent use of credit and other financial transaction cards. The bill makes a number of amendments to §§76-6-506.2, 506.3 and 506.5, all, presumably, to address new and imaginative tricks employed by criminals in their attempts to separate us from our money. When Rich Hamp of the AG's Office drafted this bill, he also intended to fix anomalies that revealed themselves in differing sentencing provisions. For instance a crook could use a credit card belonging to another person and be charged with a class B misdemeanor. If, however, the crook did not use the card, but only possessed it, he could be charged with a 3rd degree felony for possessing another person's card. Unfortunately, Rich's attempts to correct those anomalies were met by a fiscal note from the courts so, in order to save the rest of the bill, the old sentencing scheme was kept. Next time you have a financial transaction card offense, you'll want to carefully review the new language.

ARCHIVES AND GRAMA REVISIONS

HB 118

Rep. Douglas Aarard

This bill:

- adds a title section for the Archives and Records Service chapter; provides definitions;
- modifies language to comply with standardized definitions;
- provides that intentional and knowing destruction or mutilation of the record-copy of a record in violation of a retention schedule is a class B misdemeanor;
- provides cross references between the Archives and Records Service chapter and the Government Records Access and Management Act; and
- clarifies that an employee of a governmental entity may be disciplined or fired for intentionally and knowingly destroying or mutilating a record in violation of a retention schedule.

RETAIL AND LIBRARY THEFT AMENDMENTS

HB 123

REP. FRANCIS GIBSON

HB 123 repeals section 76-6-605 of the Utah Code. This now outdated section required photos of merchandise taken in retail or library theft cases to bear a written description of the items

taken, the name of the owner, or the store, establishment, or library, where the offense occurred, the name of the accused, the name of the arresting peace officer, the date of the photograph, and the name of the photographer. The section also required that the writing on the photograph be made under oath by the arresting peace officer.

VOTER IDENTIFICATION FOR ELECTIONS

HB 126

Rep. Bradley Daw

Under this bill a voter must present identification before being allowed to vote. Certain forms of identification are eliminated as valid voter identification. Valid voter identification must be presented before a voter may vote. The bill also provides a fee waiver for an application for an identification card by certain indigent applicants and allows the Driver License Division to seek certain information from the Tax Commission to verify a person's indigency. The bill also changes or eliminates various provisions addressing the language in voter registration forms, the need for valid voter identification, and the definition of "legally entitled to vote."

ALCOHOLIC BEVERAGE AMENDMENTS RELATED TO MINORS

HB 129

REP. CURTIS ODA

This bill creates the new crime of "Minor's unlawful use of proof of age." Under this statute, in addition to already existing penalties, a first offense for unlawfully using a proof of age is a class B misdemeanor, a second offense is a class A misdemeanor, and a third or subsequent offense is also a class A misdemeanor that may have an accompanying fine of up to \$5,000. On a third or subsequent offense, the court may also impose screening, assessment, or substance abuse treatment, and educational series, community service, fees for restitution and treatment cost, and a defensive driver education course. Additionally, the minor will lose their license for 1 year for each offense.

ASSET PRESERVATION AMENDMENTS

HB 130

Rep. Greg Hughes

Every cop investigating financial crimes and prosecutor charging such crimes *needs to know* about the Utah law that allows pre-charging asset freezing by court order when a prosecutor determines that there is a substantial likelihood that the a conviction and restitution order will occur. This amendment allows the court to rely on reliable hearsay in ordering asset preservation.

SEXUAL ASSAULT VICTIM PROTOCOLS

HB 132

Rep. Jackie Biskupski

This bill has no criminal provisions or punishments. It does, however, include provisions for information and services which must be provided to victims of sexual assaults. As such, prosecutors and law enforcement officers need to be aware of its contents.

The bill:

- Requires a designated facility (defined to include a freestanding urgent care center, a general acute hospital, or a critical access hospital) to provide a victim of sexual assault with:
 - information regarding emergency contraception; and
 - emergency contraception, upon request by the victim.
- Requires a designated facility to:
 - maintain a protocol, prepared by a physician, for the administration of emergency contraception at the designated facility to a victim of sexual assault; and
 - develop and implement a written policy to ensure that a person is present at the facility, or on-call, who has authority and training to comply with the requirements of this bill.
- Requires a practitioner who is not at a designated facility to:
 - provide a victim of sexual assault with information regarding emergency contraception; and
 - provide the victim of sexual assault with emergency contraception, upon her request, or inform her of the nearest location where she may obtain emergency contraception.
- Grants rule making authority to the Department of Health; and
- Provides for the enforcement of the provisions of this bill by the Department of Health.

SEX OFFENDER DEFINITION AMENDMENTS

HB 136

REP. PAUL RAY

This bill increases the penalties for lewdness and sexual battery and adds those offenses to the list offenses on the sex and kidnap offender registry under certain circumstances.

Although the penalty levels in this bill are different from those in HB 384, a coordinating clause states that the penalties in HB 384 take priority. Accordingly, a first or second conviction for lewdness remains a class B misdemeanor. Lewdness becomes a third degree felony if at the time of the violation, the person is a registered sex offender, has previously been convicted of lewdness involving a child, or has been convicted twice of lewdness. Lewdness involving a child becomes a third degree felony if at the time of the violation the person has previously been convicted of lewdness involving a child.

A person is required to register as a sex offender if they have been convicted of lewdness four or more times, sexual battery four or more times, or a combination of the two offenses four or more times.

EXPUNGEMENT OF RECORDS AMENDMENTS

HB 138

Rep. Julie Fisher

The birth of this bill was a constituent who got into a fight and after being acquitted at trial of assault complained that the process for getting an expungement was just too long. The first part of this bill addresses this “problem” by mandating that a person acquitted at trial goes to the head of the line at BCI in terms of getting a certificate of eligibility for expungement.

Once the bill was moving forward, Representative Fisher agreed to add a second part which may in rare instances be helpful to prosecutors. It states: “If after obtaining an expungement, the petitioner is charged with a felony, the state may petition the court to open the expunged records upon a showing of good cause.” Thus, where a prosecutor has personal knowledge that a defendant has something sordid in their past but those records were expunged, if there is a good reason to reopen the records, it might be done.

BILLBOARD AMENDMENTS

HB 141

Rep. Craig Frank

This bill impacts various provisions relating to billboards. The bill modifies the criteria under which a county or municipality is considered to have initiated the acquisition of a billboard structure by eminent domain when the county or municipality prevents the billboard owner from relocating the billboard.. It modifies the height limitation of billboards erected by an owner who modifies, upgrades, or relocates a billboard and it increases from 60 to 90 days the period during which a county or municipality and billboard owner have to agree to a mutually acceptable location before the county or municipality is considered to have initiated the acquisition of a billboard by eminent domain. The allowable height of an outdoor advertising sign whose height is adjusted by the owner because of an obstruction due to state agency action is modified. Definitions are added to county and municipal land use provisions and to the Utah Outdoor Advertising Act.

REPORTING ABUSE OR NEGLECT OF THE ELDERLY OR DISABLED

HB 142

REP. LYNN HEMINGWAY

HB 142 allows an individual or covered employer who has, within the last 10 days, hired a person to provide care to an elderly adult or disabled person in the home of the elderly adult or disabled person, to submit the new employee’s information to the Department of Health to determine if the person has a history of abuse, neglect, or exploitation of a minor or elderly adult, and to obtain a criminal background check.

It is an infraction for an employer to intentionally misrepresent any fact about employment to obtain background information.

VICTIM RIGHTS AMENDMENTS

HB 148

REP. CURT WEBB

Victim advocates Paul Cassell, Mel Wilson and Heidi Nestell drafted and promoted this legislation. It is a response to two cases where it is alleged that the victims rights were substantially violated by prosecutors. In those cases the victims were left without clear statutory remedies. While the lack of remedies was very troubling, SWAP-LAC had many concerns about legislation which would allow the court to reconsider or even set aside a guilty plea or sentencing based on a claim that the victim's rights had been violated. It was of particular concern in domestic violence cases where the victim is likely to be pressured by the defendant to assert such a claim. Additionally we were concerned that setting aside a plea of guilty would create a double jeopardy issue.

The SWAP board was anxious to cooperate with the victim advocates and find a remedy if possible. In addressing those problems the bill evolved considerably. In the final version 77-38-11 gives the judge authority to fashion an appropriate remedy for the victim.

Hopefully the following procedures included in the bill will help avoid undue collateral consequences.

On receiving a petition from the victim the court first determines that there has not been undue delay in asserting the violation of rights (subsection (3)(a)). There is a 90 day limit from the alleged violation to the filing of an action alleging the violation (subsection (3)(f)).

If the judge finds that the victim has shown that there was not undue delay then the judge is required to hold a hearing and hear from the prosecution and defense. The judge then determines whether the victims rights were violated. If the judge finds a violation of victims rights the next stage is to determine an appropriate remedy.

In determining an appropriate remedy the judge needs to determine first whether a different decision would have been made if the victims rights had not been violated. We expect that this is the major check against frivolous claims or those made under duress. If the judge does find that a different decision would have been made he or she shall modify the decision appropriately.

Subsection 3b provides "in no event shall the appropriate remedy be a new trial, damages, attorney fees or costs".

The court may re-open a sentence or plea only if doing so would "not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice". It also provides that the remedy must be tailored "without violating any constitutional right of the defendant".

Regarding the double jeopardy issue, SWAP worked with Ron Gordon who was at the time director of the Crime Victim Reparations Office in crafting a "kings X" provision.

Subsection 3d provides “if the court sets aside a previously entered plea of guilty or no contest and thereafter continued prosecution of the charge is held to be prevented by the defendant’s having been previously put in jeopardy, the order setting aside the plea is void and the plea is reinstated as of the date of its original entry”.

MOTOR VEHICLE FORFEITURE AMENDMENTS

HB 151

Rep. Christopher Herrod

Forfeiture of a vehicle amendments is a new DUI prevention tool enacted this year. Under this law, a vehicle becomes subject to forfeiture where:

- a. The current offense is a DUI or DUI-metabolite, AND
- b. The driver has **a prior conviction for a felony DUI offense or an automobile homicide offense which was entered after May 12, 2009; AND**
- c. The driver is driving on a suspended license for a DUI related offense, AND
- d. All of the forfeiture procedures and safeguards of Section 24-1-1 *et. seq.* will be met.

In practice this means officers should be conducting a criminal history check soon after a driver is arrested on a DUI (and the vehicle has likely been state-tax impounded) to determine whether the driver has a post May 12, 2009 felony or automobile homicide conviction, and whether the driver was also driving on a DUI revoked license. If all that is true, prepare an “asset seizure notification” form for the vehicle and be sure it is delivered to the defendant within 30 days of the initial seizure.

Of course, keep in mind that a prosecutor must follow 24-1-1 *et. seq.* before the vehicle could be subject to forfeiture. So, if there is an innocent owner to the vehicle, or kids won’t get to school, or somebody will be put out of a job, or there isn’t enough equity in the vehicle to make it worthwhile, it’s probably best not to seize the car for forfeiture.

TRESPASS LAW AMENDMENTS AGRICULTURAL AND RANGE LANDS

HB 153

Rep. John Mathis

This bill enacts section 76-6-206.3 making it a class B misdemeanor to trespass on agricultural or range land, and to cut, destroy or render ineffective the fencing of agricultural or range land. In addition to usual restitution, this bill also provides that a separate civil action may be brought by the owner of such lands against a person who violates this section for statutory damages in the amount of \$500.00, or the value of damages resulting from the violation, whichever is greater.

SUBDIVISION APPROVAL AMENDMENTS

HB 156

Rep. R. Curt Webb

This bill authorizes an owner of a contiguous parcel of agricultural land within a county a of the third, fourth, fifth, or sixth class to divide from the land one parcel per 100 acres, without complying with subdivision plat requirements or county subdivision ordinances; and prohibits counties of the third, fourth, fifth, and sixth class from denying a building permit to an owner of a minor subdivision parcel if the parcel meets the county's reasonable standards for health, safety, and access.

PROPERTY TAX ASSESSMENT AMENDMENTS

HB 157

Rep. Wayne Harper

This bill amends the appraiser licensing requirements for certain county assessors and provisions in the Property Tax Act relating to the Multicounty Assessing and Collecting Levy. County assessors in first, second, and third class counties are required to be state licensed or state certified appraisers prior to taking office as a county assessor. The bill requires second through sixth class counties to levy an additional .000010 per dollar of taxable value for its Multicounty Assessing and Collecting Levy and requires certain revenue from the Property Tax Valuation Agency Fund to be disbursed to the Multicounty Appraisal Trust. The bill decreases the county additional property tax for certain second and third class counties and provides a method to determine the amount of revenue to be transferred from the Property Tax Valuation Agency Fund to the Multicounty Appraisal Trust. It provides that the Multicounty Appraisal Trust oversee the distributions of revenue received from the Property Tax Valuation Agency Fund.

PROPERTY TRANSACTION AMENDMENTS

HB 163

Rep. Carl Wimmer

This bill modifies the Secondhand Merchandise Transaction Information Act by providing that scrap and secondary metals dealers are exempt from the act and providing transaction and record keeping provisions regarding precious metals and coins. This bill amends the definition of a secondhand business to provide an exemption for regulated metal dealers; requires reporting to the database of certain transactions by coin dealers; modifies the Pawnbroker and Secondhand Merchandise Advisory Board to include a coin dealer representative; provides definitions related to the coin dealer business; provides a criminal penalty for unauthorized release of database information; provides that neither coin dealers nor pawnbrokers are required to hold precious metals or coins as defined; and changes the hold period for pawnbrokers and secondhand dealers from ten days to 15 days.

Effective date: This bill has an effective date of July 1, 2009.

PUBLIC LANDS POLICY COORDINATION AMENDMENTS

HB 169

Rep. Michael Noel

This bill eliminates the Public Lands Policy Coordinating Council and makes changes concerning the Constitutional Defense Council and other entities concerning public lands matters. The bill addresses membership of the Constitutional Defense Council and their duties. It provides that the Public Lands Policy Coordinating Office assist the Office of the Attorney General in providing staff support to the Constitutional Defense Council and addresses the development and updating of a plan for R.S. 2477 rights. It also provides for grants to counties for public lands issues with a state benefit and requires the Public Lands Policy Coordinating Office to report to and assist the Constitutional Defense Council in carrying out the Constitutional Defense Council's duties. The bill addresses the state planning coordinator's duties and makes certain documents protected records under Title 63G, Chapter 2, Government Records Access and Management Act. Finally, it allows the Public Lands Policy Coordinating Office to enter into contracts with other state agencies for services.

HUNTING GUIDES AND OUTFITTERS LICENSING ACT

HB 173

Rep. Evan Vickers

This bill enacts the Hunting Guides and Outfitters Licensing Act. It defines hunting guide, outfitter, and outfitting services; creates the Hunting Guides and Outfitters Licensing Board and provides for its duties and responsibilities; provides for the licensing of hunting guides and outfitters by the division; provides for qualifications for licensure as a hunting guide or outfitter, for the term of the license and its renewal, and for exemptions from licensure; provides grounds for denial of, suspension, revocation, or restrictions on a license issued under the act, and for disciplinary proceedings; and defines unlawful and unprofessional conduct as related to the conduct of licensed hunting guides and outfitters.

The bill contains no criminal provisions but DWR and State Parks enforcement officers should familiarize themselves with its provisions.

SCHOOL DISTRICT TRAFFIC VIOLATION COMPLAINT PROCEDURES

HB 202

Rep. Wayne Harper

This bill enacts section 41-6a-604.5 which authorizes a school crossing guard who observes a person speeding in a reduced speed school zone to report the incident to a law enforcement agency, and requires that law enforcement agency to send a notification letter to the last-known registered owner of the vehicle containing the crossing guard's observations, an explanation of section 41-6a-604, and an explanation that the letter is not a citation but a call to attention of the seriousness of the

incident. Law enforcement agencies shall make reporting forms available to school crossing guards and school administrative offices, and school crossing guards must use those forms. Law enforcement agencies may initiate an investigation based on such a reported violation.

WATER SOURCE PROTECTION AMENDMENTS

HB 205

Rep. Michael Noel

This bill limits the requirement to adopt a water source protection ordinance to counties of the first and second class and limits the authorization of a municipality to adopt a water source protection ordinance to municipalities located within a county of the first or second class.

AMENDMENTS TO CRIMINAL APPEALS

HB 209

Rep. Julie Fisher

A simple but helpful bill. 77-18a-1 (appeals when proper) will now read:

- (3) The prosecution may, as a matter of right, appeal from: . . .
- (f) an order granting a new trial;

STATE PAYMENT AND REIMBURSEMENT TO COUNTY CORRECTIONAL FACILITIES

HB 220

Rep. Michael Noel

This bill:

- modifies the definition of a "state parole inmate";
- requires the Department of Corrections to pay counties, for housing state probationary inmates or state parole inmates, at a rate of 50% of the final state daily incarceration rate;
- provides that, by August 1 of each year, a county must submit a report to the Department of Corrections regarding the housing of state probationary inmates or state parole inmates during the preceding state fiscal year;
- provides that the director of the Department of Corrections shall, on or before September 30 of each year, pay each county for housing state probationary inmates and state parole inmates, based on the number housed by each county during the state fiscal year that ended on June 30 of the preceding calendar year; and
- provides for the distribution of information to, and the discussion of information by, the counties regarding the "actual state daily incarceration rate" and the number of state probationary inmates and state parole inmates housed by each county.

STATUTE OF LIMITATION AMENDMENTS

HB 223

REP. CARL WIMMER

The 2008 changes to Child Abuse Homicide created an unusual situation where 1st Degree Child Abuse Homicide had a shorter statute of limitations than 2nd Degree Child Abuse Homicide.

At the request of SWAP, Representative Wimmer addressed the problem in a new bill. His choice was to simply remove all limitations from child abuse homicide. The rest of the legislature agreed.

DISASTER RECOVERY AND EMERGENCY MANAGEMENT AMENDMENTS

HB 226

Rep. Curtis Oda

This bill clarifies that a responding political subdivision may loan equipment and donate services to a requesting, rather than a responding, political subdivision.

ASSAULT ON A UNIFORMED MILITARY SERVICE MEMBER

HB 228

Rep. Eric Hutchings

One finds it hard to believe that any American could stoop so low as to assault a member of our uniformed armed services, the same men and women sworn to preserve the rule of law and fundamental freedoms that we all enjoy. Though perhaps this law will never be used, it essentially places the incredible men and women of the armed forces on equal footing with a peace officer who is assaulted, providing the same penalties and the same minimum incarceration period for repeat offenders. One would hope that men and women good and true are standing nearby in the event of such a crime and that the same citizens would properly intervene and detain the lowlife, bottom-dwelling scoundrel until the cops arrive. Only a true fool believes that freedom is free (editorializing by the father of a serving soldier).

CAMPAIGN FINANCIAL REPORTING REQUIREMENTS REVISIONS

HB 232

Rep. Douglas Aagard

This bill changes certain definitions in Title 20A, Chapter 11, Campaign and Financial Reporting Requirements including definitions concerning corporations, political action committees, political issues committees, and political issues expenditures. It also eliminates the definition of Political issues committee under section 20A-11-1202.

AGGRAVATED SEXUAL ASSAULT AMENDMENTS

HB 233

REP. CARL WIMMER

There has been some inconsistency in the minimum penalties for crimes involving sexual assault. The purpose of this bill is to rearrange the minimum penalties so that there is a logical progression. This project was undertaken primarily due to the energetic work of Tom Vaughn of Legislative General Counsel.

The biggest inconsistency was in attempted rape etc. where under aggravated sexual assault non serious bodily injury received higher minimum penalties than serious bodily injury under the individual crime sections.

The only way to avoid head spinning confusion is to briefly survey the progression under the new bill:

- the penalty for rape of an adult victim without serious bodily injury is a 1st degree felony punishable by an indeterminate prison term of 5 years to life (Rape section 76-5-402(3)(a));
- with serious bodily injury the penalty is an indeterminate prison term of 15 years to life;
- with non-serious bodily injury the base penalty continues to apply;
- with serious bodily injury the sentence is 15 to life.

The bill also preserves the 15 to life penalties for use or threatened use of a dangerous weapon in the course of committing a rape, or for a rape where the person is aided or abetted by one or more persons.

This progression of course also applies to the crimes of Object Rape and Forcible Sodomy.

An attempted rape of an adult victim where the victim does not suffer serious bodily injury is 3 years to life (76-4-102(1)(c)).

If, during the commission of one of these crimes, serious bodily injury is caused to any person the penalty will be 10 years to life. If the attempted rape involves the use or threatened use of a dangerous weapon or the person is aided or abetted by one or more persons the penalty is 15 years to life.

If a person has previously been convicted of what the statute calls “grievous sexual offenses” and causes serious bodily injury, uses a dangerous weapon, or is aided or abetted in either a completed or an attempted rape, the maximum penalty is life without the possibility of parole.

LEAVING THE SCENE OF AN ACCIDENT PENALTY AMENDMENTS

HB 237

Rep. Christopher Herrod

This bill amends sections 41-6a-401.3 and -401.5 to increase the penalty from a class A misdemeanor to a third degree felony for not meeting the stop, remain, exchange and inform requirements when involved in an accident when a person has certain prior convictions. Those

convictions are: where the person has a prior DUI-related conviction under section 41-6a-501(2) for a violation that occurred after May 12, 2009 and either that conviction is within ten years of the commission of the offense upon which the current conviction is based, or the current conviction for not meeting the stop, remain, exchange and inform requirements is at any time after a conviction for auto homicide, felony DUI (or either auto homicide or felony DUI that was later reduced under section 76-3-402) committed after May 12, 2009. In addition, the penalty for not meeting the stop, remain, exchange and inform requirements when involved in an accident involving death of a person is increased from a class A misdemeanor to a third degree felony where the person has a record of convictions as described above.

UTAH MEDICAL EXAMINER ACT - INVESTIGATION AND AUTOPSIES AMENDMENTS

HB 239

Rep. Curtis Oda

This bill grants the attorney general or an assistant attorney general the authority to investigate deaths that are required to be reviewed by the Medical Examiner pursuant to §26-4-7. The bill also grants the attorney general the authority to request an autopsy under the provisions of that section. Most of you are probably wondering why this bill was needed. Hasn't the AG's Office been handling murder cases for as long as anyone can remember? Yes, but that was usually done at the request of the county or district attorney. Before the enactment of this bill, the statute named only county and district attorneys and law enforcement officers as those who had authority to investigate a death requiring the medical examiner's involvement and those who had authority to request an autopsy.

WANTON DESTRUCTION OF LIVESTOCK

HB 240

Rep. Ronda Menlove

The public safety portions of this bill creates new misdemeanor and felony crimes for wanton destruction of wildlife (level of offense correlated to value of the livestock). The bill also provides for seizure and forfeiture of items and vehicles used to commit such crimes. So when you next encounter an animal issues terrorist pouring sand into a tractor gas tank or releasing mink to their inevitable and unpleasant deaths, and you find said suspects driving away in a vehicle, consider seizing and forfeiting the vehicle.

PRIORITY OF WATER RIGHTS

HB 241

Rep. Kerry Gibson

This bill repeals a section 73-3-21 relating to the priority of water rights in times of scarcity.

DISRUPTION OF SCHOOL ACTIVITIES

HB 244

REP. CAROL SPACKMAN MOSS

This is a response to a case in which the defendant was fleeing from police and went onto school property where school was disrupted causing quite a community stir. Although this is likely not an everyday occurrence, we now have a specific statute to deal with it. A new section 76-8-1403 Evading Law Enforcement by Going on to School Property is enacted.

A person is guilty of a class A misdemeanor “if the person enters onto school property when:
(a) students are attending the school or students are participating in any school-related activity or program on school property; and
(b) the person is in the act of fleeing or evading, or attempting to flee or evade, pursuit or apprehension by any peace officer.”

It is not a defense under this statute that the person did not know that he had entered onto school property. This section also requires restitution for costs incurred by the school in responding to the defendant’s presence on school property.

At SWAP’s request and in order to avoid a *Shondel* problem, the following language was added:

“(5) the offense under this section of evading law enforcement while on school property is a separate offense from the violation of:
(a) Section 41-6a-210, regarding failure to respond to an officer’s signal to stop; or
(b) Section 76-8-305.5, regarding failure to stop at the command of a law enforcement officer.”

So hopefully if this issue ever comes up again we will be able to charge the defendant with both fleeing (either in an automobile or on foot) and the section regarding going onto school property.

AMENDMENTS TO E-MAIL INFORMATION REQUIRED OF REGISTERED SEX OFFENDERS

HB 247

REP. JIM BIRD

Responding to several lawsuits filed since passage of last year’s sex offender registry statute, HB 247 makes three changes to the current requirements of the sex offender and kidnap registry:

- While an offender is still required to provide online internet identifiers, they are no longer required to provide internet passwords.
- Removes information from public registry that identifies the offender’s primary and secondary targets.
- Removes 76-5- 304 Unlawful Detention as a registration requiring offense.

POLITICAL SUBDIVISION CLERK AMENDMENTS

HB 257

Rep. Merlynn Newbold

This bill modifies a provision relating to reports or payments to the state or political subdivisions of the state. A report mailed to a political subdivision is considered received on the date indicated in the post office stamp (cancellation mark). For certain reports it is conditioned upon the report having been mailed to the attention of the clerk or recorder of the political subdivision.

AMENDMENTS TO NOTICE PROVISIONS FOR SUBDIVISION CHANGES

HB 258

Rep. Kraig Powell

This bill modifies a reference to a notice provision in a provision relating to proposed changes to subdivision plats.

LOCAL GOVERNMENT AMENDMENTS

HB 259

Rep. Stephen Sandstrom

This bill enacts a definition of “charter school” in impact fee provisions and repeals obsolete language relating to impact fees. It clarifies the purposes of an impact fee capital facilities plan and modifies provisions relating to the written analysis associated with impact fees. The bill also modifies provisions relating to an impact fee enactment and limits impacts fees that can be imposed on a school district or charter school. It requires local political subdivisions and private entities to ensure that their impact fees comply with the requirements of the bill, even if the impact fee was earlier imposed but not paid. It also requires a local political subdivision or private entity to participate in mediation of any applicable fee if the state, a school district, or a charter school requests mediation and narrows a limitation on a county and municipality’s ability to impose regulations on the location of a facility to apply only to certain educational facilities.

POSTMORTEM PROCEDURES AMENDMENTS

HB 265

Rep. Bradley Daw

This bill provides that if a funeral service director is not retained, a designated agent or the next of kin of a decedent may sign and file the death certificate. Such persons, when acting pursuant to the provisions of the bill, are collectively known as a “dispositioner.” The bill describes other rights and responsibilities of a designated agent or the next of kin of a decedent when a funeral service director is not retained.

The reason this bill is included in these summaries is a class B misdemeanor provision for any person who intentionally signs the portion of a death certificate that is required to be signed by a funeral service director or a dispositioner, unless the person is a funeral service director, employed by a licensed funeral establishment; or is a dispositioner, if a funeral service director is not retained.

LOCAL GOVERNMENT FEES AND CHARGES TO STATE AGENCIES
HB 274 **Rep. C. Brent Wallis**

This bill:

- clarifies that impact fees may not be imposed on state agencies;
- prohibits counties, municipalities, local districts, and special service districts from charging state agencies utility connection fees that exceed the local government's actual cost of connecting the utility to the state agency's facility;
- authorizes counties, municipalities, local districts, and special service districts to charge state agencies the actual cost of providing infrastructure if the need for the infrastructure arises directly because of a state facility and the infrastructure is necessary to allow the local government to provide utility service to the state facility;
- requires counties, municipalities, local districts, and special service districts to place funds collected from a state agency for infrastructure in a dedicated account and to return any surplus promptly after completion of the infrastructure;
- authorizes counties, municipalities, local districts, and special service districts to charge a state agency for its actual consumption of service provided by a local government utility; and
- prohibits counties, municipalities, local districts, and special service districts from charging other fees or charges relating to the design or construction of a state facility.

DOMESTIC VIOLENCE IN PRESENCE OF A CHILD AMENDMENTS
HB 275 **Rep. Kerry Gibson**

Short and sweet. This bill modifies the offense of committing domestic violence in the presence of a child (76-5-109.1) to provide that a person who commits a violation of the section when more than one child is present is guilty of a separate offense for each child present when the violation occurred.

B AND C ROADS FUND AMENDMENTS
HB 278 **Rep. Michael Noel**

This bill provides that a county or municipality may use up to 30% of the class B and class

C roads account funds allocated to the county or municipality to pay the costs of asserting, defending, or litigating state and local government rights under R.S. 477 on class B, class C, or class D roads.

ILLEGAL USE OF MOTOR VEHICLES ON PUBLIC OR PRIVATE LANDS

HB 283

Rep. Michael Noel

This bill modifies the motor vehicle code by amending and enacting provisions relating to illegal motor vehicle use on public and private land (it amends sections 41-22-2, 41-22-12 and 41-22-12.5 and enacts 41-22-12.2, 41-22-12.7 and 41-22-12.8). It prohibits the tearing down, mutilating, defacing and destruction of signs and notices regulating off-highway road use and fences, gates and other enclosures. It prohibits operating motor vehicles cross-country on public lands not designated for such use, and provides enhanced penalties for those who violate these sections while having a prior similar conviction, and for those who damage or harass wildlife or livestock, or damage vegetation, trees, wetlands and riparian areas.

BACKGROUND CHECKS FOR QUALIFYING ENTITIES

HB 289

Rep. Stephen Sandstrom

This bill permits a background check of a volunteer utilized by a "qualifying entity" and expands the definition of "qualifying entity" in order to permit a background check of a person who provides services to a vulnerable adult.

PROHIBITION OF WIRELESS COMMUNICATION DEVICE USE IN A MOTOR VEHICLE

HB 290

REP. STEPHEN CLARK

Of the five proposed bills intended to prohibit text messaging and cell phone use while driving, HB 290 emerged as the winner. This bill prohibits the use of a handheld wireless communication device for text or sending email while operating a *moving* motor vehicle. It is a class C misdemeanor for a first violation of this section. It is a class B misdemeanor for a second violation within 3 years, or if serious bodily injury is caused. Under this section the judge may suspend a driver's license for 90 days for a violation of this section.

The bill also creates the crime of automobile homicide involving text messaging or electronic mail communication while driving statute. It makes it a third degree felony to operate a vehicle in a negligent or criminally negligent manner and cause the death of another while text messaging or emailing. License suspension is mandatory for a violation of this section.

COUNTY PERSONNEL AMENDMENTS

HB 291

Rep. Brian King

This bill increases from 90 to 270 the number of days that county personnel rules are to provide as the maximum period for temporary, provisional, other non-career service, and emergency appointments. It also eliminates language allowing that period to be extended.

TRAFFIC VIOLATIONS & CITATIONS AMENDMENTS

HB 292

Rep. Don Ipson

This bill has three parts.

1. Makes some necessary changes to language in a couple of moving violations statutes. Reckless driving and careless driving have language added so that a violation occurs only where there are two (or three) violations “occurring within a single continuous period of driving covering three miles or less in total distance.” This was a necessary change because the current statute is unconstitutionally over-broad (picture citing somebody for reckless driving because they commit three violations between St. George and Salt Lake). Next, the bill redefines the unsafe-lane violation statute so that the determination of what constitutes a safe lane change is not up to the driver, but is rather a “reasonable person” standard under those same conditions.
2. States that the issuance of a citation commences the prosecution for purposes of the statute of limitations.
3. Is a bit more elaborate. This part eliminates current language which would prohibit a judge from issuing a warrant on the statewide warrant system for failure to appear in court where the underlying offense is a traffic violation (misdemeanor or infraction), while also allowing such a warrant to be issued on the failure to appear alone, without a requirement that a separate failure to appear information be filed. The purposes of these changes are two-fold:
 - FIRST, this will allow for greater enforcement of traffic fines and violations through operation of the overpayment of tax section, as was originally intended. What that section says is, if you have an outstanding ticket, and there is a warrant on the statewide warrant system for failing to appear in court on that ticket, the tax division can apply your overpayment of tax (i.e., your upcoming tax refund) as bail. If after notice, and 40 days, you still fail to go down to court to take care of it, it will be treated as a conviction and the money will go to the court and the case will be closed.
 - SECOND, the change will eliminate the need for justice courts to have a “failure to appear” class B misdemeanor charged and filed by the local prosecutor before the class C misdemeanor (or now, even an infraction) may appear on the statewide warrants computer. This should be a great work reduction for both city prosecutors and justice courts.

A PLEA TO OFFICERS: This law anticipates that judges will utilize the statewide warrant system as it was intended, which would include stating whether an FTA on a citation warrant is (a)

one for which an appearance is mandatory, or (b) one for which the driver should be released with a warning and promise to appear, or (c) a notation indicating what area or the maximum distance the judge authorizes transport upon arrest. However, judges (or their clerks) may at times neglect to make these notations. **Please do not make arrests - especially out of county arrests - where the underlying offense is an infraction or a simple class C speeding ticket, etc.** Again, the purpose of these changes is **not** to have more people arrested and booked into jail on traffic citations, but to have fewer people arrested, while still collecting on the underlying citations and closing out the case.

MONEY LAUNDERING AMENDMENTS

HB 295

Rep. Ryan Wilcox

This bill amends the offense of money laundering to avoid state transaction reporting requirements so the offense includes the laundering of money to avoid federal transaction reporting requirements.

COUNTY FISCAL PROCEDURES AMENDMENTS

HB 309

Rep. Christopher Herrod

This bill will impact county elected offices by modifying a provision relating to transferring an unencumbered or unexpended appropriation balance or incurring an excess expenditure. It eliminates the need for the budget officer's consent and requires instead the officer's review. The bill allows the transfer or expenditure if it is in accordance with budgetary and fiscal policies or ordinances adopted by the county legislative body and modifies a provision requiring county officers to be paid monthly to allow officers to be paid monthly, semi-monthly, or bi-weekly, as determined by the county legislative body.

SOCIAL HOST LIABILITY ACT

HB 313

REP. ERIC HUTCHINGS

This bill attempts to create a civil liability for parents and other adults who host or knowingly allow parties for minors where alcohol is present. This new section of the code entitled, "Social Host Liability Act," provides that a law enforcement officer may issue a citation to an individual who knowingly conducts, aids, or allows an underage drinking gathering. The citation is intended to carry a civil penalty of \$250 for a first citation, and then double the fine amount for each subsequent citation. The individual can also be held responsible for the costs of emergency response up to \$1,000.

This penalty is intended to be a civil penalty that is collected and negotiated by the local government, but that can be appealed in the same manner that traffic citations and ordinance violations are appealed. This creates jurisdictional and enforcement issues that each local government will need to sort through if they intend to issue such citations.

CAPITAL FELONY AMENDMENTS

HB 317

REP. CARL WIMMER

Representative Wimmer originally opened this file intending to remove the 20 years to life option from sentencing for Aggravated Murder. SWAP suggested that the better alternative would be to raise the minimum term in that option from 20 years to 25 years. Bob Stott of the Salt Lake County District Attorney's Office suggested that in cases where it is used, a 25 year minimum would have a much better appeal to victim families and the community at large. We have to agree with that.

In Section 76-3-206 Capital Felony - Penalties, where the death penalty remains on the table, the lowest of 3 sentencing options is changed from 20 years to life to 25 years to life.

In Section 76-3-207.7 Aggravated Murder Non-Capital Felony, where the death penalty is not still on the table, the lesser of the 2 sentencing options has changed from 20 to life to 25 to life.

Now comes the truly annoying part. In 76-5-202 Aggravated Murder there is another reference to penalties where intent to seek the death penalty has not been filed. That language is in subsection (3)(b). That reference to a 20 to life penalty was missed entirely until it was pointed out by Director Skinner of the Sentencing Commission - after the session. This is not a particularly serious matter as the Board of Pardons is not releasing aggravated murderers before a minimum service of 25 years anyway, but it is annoying. We have drafted legislation for the 2010 session which replaces that sentencing language with a simple cross reference to the sentencing section.

DISASTER RECOVERY FUNDING AMENDMENTS

HB 319

Rep. Curtis Oda

Under this bill certain local districts and special service districts among the local government entities are authorized to create and maintain a local government disaster fund.

AMENDMENTS REGARDING NOTICE ON UTAH PUBLIC NOTICE WEBSITE

HB 323

Rep. Bradley Winn

This bill modifies the notice that certain entities are required to provide before preparing a proposed general plan or amendment, long-range plan, or capital facilities plan so that: some entities are required to provide notice on the Utah Public Notice Website rather than to the state planning coordinator. Those entities not required to provide notice on the Utah Public Notice Website but that voluntarily provide notice on that website need not provide notice to the state planning coordinator.

MOTOR VEHICLE BUSINESS REGULATION AMENDMENTS

HB 324

Rep. Francis Gibson

This bill amends section 41-3-202 to allow a person who has been issued a motor vehicle salesperson's license and that is employed by a dealer that operates as a wholesale motor vehicle auction may be employed by more than one such dealer at a time.

BUILDING INSPECTOR AMENDMENTS

HB 327

Rep. Douglas Aagard

This bill amends the Uniform Building Standards Act and requires that a local regulator issuing a single-family residential building permit provide for a review of the building permit inspection.

DISPROPORTIONATE RENTAL FEE AMENDMENTS

HB 342

Rep. Gage Froerer

This bill modifies a provision of the Utah Municipal Code relating to disproportionate rental fees imposed by municipalities. A municipality that has not already imposed a disproportionate rental fee is authorized to impose the fee after meeting specified requirements and conditions. It requires municipalities imposing a disproportionate rental fee for the first time to establish a good landlord program allowing the landlord to qualify for a reduction in the disproportionate rental fee if complying with certain requirements and removes the requirement to update the municipal services study every six years for municipalities with a good landlord program. The bill further clarifies and rewrites provisions that grandfather certain municipalities from certain requirements and restrictions and establishes a deadline for completing a municipal services study for certain municipalities. It changes the term "governing body" to "legislative body" in certain provisions and provides definitions.

CAMPAIGN AND FINANCIAL REPORTING REQUIREMENTS AMENDMENTS

HB 346

Rep. Brad Dee

This bill:

- defines terms;
- addresses the reporting of in-kind contributions; requires contributions and public service assistance to be reported within 30 days of the day on which they are received; and
- requires contributions and public service assistance that are made in the form of a negotiable instrument or check to be negotiated before the filing deadline for, and included on, interim reports.

ALCOHOLIC BEVERAGE RELATED AMENDMENTS

HB 352

Rep. James Dunnigan

The part of this bill that is relevant to law enforcement deals with access to the records of private clubs and taverns. It provides that “inspectors” whose duties involve enforcement alcoholic beverage laws and who, therefore, have access to inspect the records of private clubs and taverns, may also have access to “visual recordings of the operations of private clubs and taverns.” *HOWEVER, the bill specifies that if the inspectors is a law enforcement officer, (s)he may not inspect, have a copy of, or otherwise review a visual recording without probable cause.* Accordingly, if a law enforcement officer asks to view the any visual recordings of the bar’s operations and the owner voluntarily allows it, great. If the owner refuses access to the visual recordings, however, the law enforcement office will have to get a search warrant.

INDIGENT INMATE TRUST FUND AMENDMENTS

HB 355

Rep. Kay McIff

This bill caps the Indigent Inmate Trust Fund at \$1,000,000 and requires the Division of Finance to notify counties that participate into in the Indigent Inmate Trust Fund (the fund) when the balance in the fund is approaching \$1,000,000. Upon receiving notice that the balance in fund has reached \$1,000,000, the counties, rather than sending the proceeds of their .0001 levy to the fund, quoting from the bill, “shall deposit monies derived from the levy into a county account used exclusively to provide defense counsel and defense related services for indigent defendants.” Any county that participates in the fund that has not already created such a restricted account should, by resolution of the county commission or council, create such an account. Upon receiving notification from the Division of Finance that the fund balance has dropped back below \$1,000,000, the counties shall again send their assessed contribution to the fund.

FIREARMS AMENDMENTS

HB 357

REP. STEPHEN SANDSTROM

The numbering of this particular bill demonstrates that legislative staff members do have a sense of humor. The theme was carried on when Senator Bell commented on the 2nd amendment to the bill in the Senate. This bill significantly loosens the restrictions on carrying a loaded firearm in a vehicle or on the persons real property.

76-10-505 now allows the carrying of a loaded firearm in a vehicle which is in the person's lawful possession or with the consent of the person who is in lawful possession of the vehicle. This does not apply to a minor under 18 years of age who may not carry a loaded firearm in a vehicle. This wide open policy applies only to handguns and not to a rifle shotgun or a muzzle loading rifle.

Unfortunately that change in 76-10-505 does not address the issue of a person hunting with a rifle or shotgun (which usually is not as drop-safe as a handgun) if the person has a concealed carry permit. The concealed carry permit exempts one entirely from this section.

76-10-511 is changed to specifically authorize a person to possess a loaded firearm on the person's real property.

AMENDMENTS TO DEPARTMENT OF CORRECTIONS OPERATIONS

HB 373

Rep. Paul Ray

As a consequence of budget cuts, this bill eliminates the provisions that allow for a judge to obtain a 90-day diagnostic evaluation at the prison for a defendant prior to sentencing the defendant. Accordingly, if a defense attorney suggests a diagnostic evaluation as an alternative to a prison recommendation, remind the court that pre-sentence diagnostic evaluations are no longer a possibility.

LOCAL GOVERNMENT RECORDS AMENDMENTS

HB 375

Rep. Ryan Wilcox

This bill requires political subdivisions to designate a person as the chief administrative officer for purposes of a records appeal.

JUDICIAL CODE AMENDMENTS

HB 377

Rep. Doug Aagard

The Attorney General must respond to petitions filed by duly-convicted persons who claim to be factually innocent, despite the provisions of Rule 65C(g), (h) of the Utah Rules of Civil Procedure.

CIRCUIT BREAKER AMENDMENTS

HB 378

Rep. Tim Cosgrove

This bill amends the Property Tax Act to amend the household income qualifying limits of some claimants applying for certain property tax relief programs. This bill for taxable year 2009, decreases a claimant's household income by \$1,000 for a dependent that the claimant is eligible to claim on the claimant's federal taxes for purposes of qualifying for a homeowner's credit for a maximum household income decrease of \$1,000; for taxable year 2009, decreases a claimant's household income by \$1,000 for a dependent that the claimant is eligible to claim on the claimant's federal taxes for purposes of qualifying for a renter's credit for a maximum household income decrease of \$1,000; and makes technical changes.

PUBLIC LEWDNESS AMENDMENTS

HB 384

REP. DON IPSON

This bill increases the penalties for repeat lewdness and sexual battery convictions. Under the new law, a first or second conviction for lewdness remains a class B misdemeanor. Lewdness becomes a third degree felony if at the time of the violation, the person is a registered sex offender, has previously been convicted of lewdness involving a child, or has been convicted twice of lewdness. Lewdness involving a child becomes a third degree felony if at the time of the violation the person has previously been convicted of lewdness involving a child.

ABSENTEE BALLOT AMENDMENTS

HB 390

Rep. John Mathis

This bill modifies the Election Code to amend the date that absentee ballots may be applied for and cast in person at the office of the election officer. Applications for absentee ballots must be applied for no later than the Friday before the election date regardless of whether the absentee ballot will be voted by mail or in person. The bill requires that in-person absentee ballots be cast no later than the Friday before the election date.

ENFORCEMENT OF CARBON MONOXIDE DETECTOR REQUIREMENTS

HB 402

Rep. Kevin Garn

This bill impacts the enforcement of carbon monoxide detector requirements. It prohibits counties and municipalities from enforcing ordinances, rules, or regulations requiring the installation or maintenance of carbon monoxide detectors in residential dwellings against anyone other than the occupant of the dwelling, subject to an exception for new construction. The bill also clarifies that local health department authority does not include the authority to enforce ordinances, rules, or regulations requiring the installation or maintenance of carbon monoxide detectors in residential dwellings against anyone other than the occupant of the dwelling.

COUNTY AUTHORITY AMENDMENTS

HB 413

Rep. Ronda Rudd Menlove

This bill authorizes county legislative bodies to divide the county into divisions and apply different fencing regulations in each division.

ECONOMIC DEVELOPMENT INCENTIVES FOR ALTERNATIVE ENERGY PROJECTS

HB 430

Rep. Kevin Garn

- This bill
- enacts the Renewable Energy Development Act within the Governor's Office of Economic Development;
 - provides for the creation of renewable energy development zones by the Governor's Office of Economic Development and provides definitions related to renewable energy development zones and renewable energy development projects undertaken within those zones;
 - provides for an economic development tax credit to business entities upon meeting standards set by the Governor's Office of Economic Development that are based on requirements established in the act;
 - provides for the issuance of a renewable energy development tax credit certificate by the office, with certain restrictions and conditions, such as specifying the maximum amount of tax credit a business entity may earn over the life of a renewable energy project;
 - provides that a renewable energy project must:
 - include direct investment within the boundaries of a zone;
 - bring new incremental jobs to the state;
 - include significant capital investment or the creation of high paying jobs or significant purchases from Utah vendors and providers; and

- generate new state revenues;
- requires the business entity to submit to audits for verification of a claimed tax credit;
- provides for certification by the office of a business entity's eligibility for a claimed tax credit; and
- requires an annual report to the Legislature and the Utah Tax Review Commission on the success of the renewable energy development project tax incentive program.

OBSTRUCTION OF NATURAL RESOURCE OR AGRICULTURAL PRODUCTION

HB 437

Rep. Michael Noel

This legislation was a direct response to the disruption of the BLM oil and gas lease sale by a University of Utah student last December. It creates the new crime of Obstruction of the Leasing of Real Property For Natural Resource or Agricultural Production; §76-6-523.

(1) Definitions

(2) A person is guilty of obstruction of the leasing of real property for natural resource or agricultural production if the person:

- (a) bids for a lease as part of a competitive process for the lease;
- (b) does not intend to pay for the lease at the time the person makes the bid described in Subsection (2)(a); and
- (c) does not pay the lessor in full for the lease as required by the lease agreement.

(3) The offense of obstruction of the leasing of real property for natural resource or agricultural production is:

- (a) a third degree felony; and
- (b) subject to a minimum fine of not less than \$7,500.

COURT SECURITY RESTRICTED ACCOUNT

HB 455

Rep. Jon Greiner

You will recall that about four or five years ago the legislature created a Court Security Account and imposed a new security surcharge, in addition to all fines and surcharges. Accordingly, the total amount charged to a defendant upon conviction should now increase by \$8.00. Failure by the judges to increase the total assessment to the defendant by \$8.00 will, necessarily, reduce the fine revenue received by the city or county and the surcharge deposited into the Criminal Fine Surcharge Fund, from which UPC, POST and Crime Victims Reparations, among others, are funded.

TOBACCO ACCESS RESTRICTIONS

HB 456

Rep. Bradley Last

This bill amends section 76-10-105.1, which restricts sale, placement and display of cigarettes and smokeless tobacco to include cigars and pipe tobacco, and asserts state law supremacy to include cigarette tobacco and pipe tobacco as products about which political subdivisions of the state may not pass ordinances, regulations or rules unless they are essentially identical to this section.

MASTER STUDY RESOLUTION

HJR 21

Rep. Kevin Garn

This bill, all 472 lines of it, provide “clues” to next year’s session or interim committee bills. Read it if you wish. Some items of interest: GRAMA balancing test, substance abuse reduction strategies, sex offender address verification, CCW fees, alimony payment duration (at least some cops will want to follow this one), requiring a defendant’s consent before reducing a charge to an infraction, surveillance device purchase restrictions, trespass law revision, workplace drug testing revision, compensation for cops exposed in meth labs, addition of salvia dinorum to the controlled substances list as a Schedule 1 drug, funding for tattoo removal (I know a sailor who might have gotten inebriated one night and could use this), prescription drug abuse and Internet prescription practices, left hand turn liability in crashes, government control of novelty cigarette lighters (ain’t touchin’ that one), smoking in cars with kids, taxing caffeine, including Diet Coke, taxing tanning beds, requiring drug testing for welfare recipients, diversity and sensitivity training for legislators, and *last but **not** least, changing the name of Groundhog Day to Prairie Dog Day.*

SENATE BILLS

INCEST AMENDMENTS

SB 11

Sen. Dennis Stowell

Certain allegedly polygamists men had fathered children born by their daughters, as shown by DNA testing, and were charged with incest. In defending against the charge the men claimed the state had failed to show that the pregnancy resulted from sexual intercourse, as was required in the language of the previous statute. The purpose of this bill is to obviate any such defense.

The bill is gender neutral. A “provider” is defined as a person who provides or makes available his seminal fluid or her human egg.

The bill expands the relationships covered by the offense. It now includes persons related to the provider or actor as an ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. It includes blood relationships of the whole or half blood without regard to legitimacy. The relationship of parent and child by adoption and the relationship of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists also comes under the statute.

I tried three time to summarize the new language in non-statutory language but, having failed to make it any clearer, the substantive language of the new statute provides:

(2) (a) An actor is guilty of incest when, under circumstances not amounting to rape, rape of a child, or aggravated sexual assault, the actor knowingly and intentionally:

- (i) engages in conduct under Subsection (2)(b)(i), (ii), (iii), or (iv); or
- (ii) provides a human egg or seminal fluid under Subsection (2)(b)(v).

(b) Conduct referred to under Subsection (2)(a) is:

- (i) sexual intercourse between the actor and a person the actor knows has kinship to the actor as a related person;
- (ii) the insertion or placement of the provider's seminal fluid into the vagina, cervix, or uterus of a related person by means other than sexual intercourse;
- (iii) providing or making available his seminal fluid for the purpose of insertion or placement of the fluid into the vagina, cervix, or uterus of a related person by means other than sexual intercourse;
- (iv) a woman 18 years of age or older who:
 - (A) knowingly allows the insertion of the seminal fluid of a provider into her vagina, cervix, or uterus by means other than sexual intercourse; and
 - (B) knows that the seminal fluid is that of a person with whom she has kinship as a related person; or
- (v) providing the actor's sperm or human egg that is used to conduct in vitro fertilization, or any other means of fertilization, with the human egg or sperm of a person who is a related person.

The bill specifically provides that it is not unlawful to provide a fertilized human egg if the provider of the fertilizing sperm is not inappropriately related to the person providing the egg.

***Effective date:** The bill provided that it was to become effective upon signing by the governor. The governor signed the bill on March 20, 2009.*

DUI AMENDMENTS

SB 12

SEN. SHELDON KILLPACK

The purpose of this bill is to provide a means for justice courts to establish specialized DUI courts. There has been considerable controversy surrounding this issue over the last few years. A division of opinion among prosecutors has been especially troubling for SWAP. Over the interim we were able to get the parties in interest together and find this solution.

First the bill provides that the “driving under the influence court” is to be established by the Utah Judicial Counsel.

To get into a DUI court program the person must enter a guilty plea to DUI. The court then enters a conviction of “impaired driving” under current law.

This bill provides both a “carrot” and a “stick” to motivate the person to complete the program. While the person is participating in or has completed the DUI court program the public report of the DUI is not put on his motor vehicle record.

In compliance with federal law this advantage cannot be applied to a holder of a commercial driver’s license.

If the person is complying with the program his driver’s license will be immediately reinstated. This reinstatement does not apply to repeat offenders.

The “stick” portion of the bill has been changed to 41-6a-509(2)(c) which provides any person (whether in a DUI court or not) fails to comply and has the impaired driving conviction amended to DUI he gets no credit for suspension time which has already been served and the suspension starts over.

PROHIBITED GANG ACTIVITY

SB 16

SEN. JON GREINER

Senator Greiner - also the Ogden police chief - modeled this legislation on the gang loitering statute from the city of Chicago. After an earlier version was struck down by the US Supreme

Court the city of Chicago fashioned its ordinance on the court opinion. Hopefully enough precautions have been taken in this particular bill to allow it to stand up to constitutional muster. The plan is for a municipal or county legislative body to designate an area or areas in their jurisdiction where police officers may require groups that include gang members to disperse. The officer may then order the group to disperse if the group includes persons an officer reasonably believes to be gang members and is in an area where loitering of groups that include gang members is prohibited. The officer is then required to warn the group that failure to disperse is subject to arrest. Thereafter, if a person fails to disperse he is guilty of a Class B Misdemeanor and subject to a fine of \$100.00. A new section 76-9-902 defines “criminal street gangs” etc. before implementing this statute it is obvious that the governing body, prosecutor and police officers will need to carefully review the statute.

For example “gang loitering” means that “a person remains in one place under circumstances that would cause a reasonable person to believe that the purpose or effect of that behavior is to enable or facilitate a criminal street gang to:

- (a) establish control over one or more identifiable areas;
- (b) intimidate others from entering those areas; or
- (c) conceal illegal activities.”

76-9-903 sets out the requirements the peace officer must follow in ordering the group to disperse. 76-9-906 and 76-9-907 are added to protect the individuals constitutional rights. 906 states that this section does not effect an individuals right to engage in collective advocacy activities. That section and 76-9-907 require policies directives and training to see that all officers that are engaged in enforcement of these provisions are appropriately trained in the statute, identification of gang members and the definition of a criminal street gang. That statutory language is best heeded.!

LOCAL PUBLIC HEALTH EMERGENCY FUNDING

SB 20

Sen. Dennis Stowell

This bill requires the Department of Health to establish a local health emergency assistance program. It also establishes requirements for the program and requires the Department of Health to submit an annual written report on program activity to the Health and Human Services Interim Committee, with a copy of the report to the designated appropriations subcommittee.

STATE AND LOCAL HEALTH AUTHORITIES AMENDMENTS

SB 21

Sen. Dennis Stowell

This bill:

- modifies responsibilities of the Department of Health and local health departments with

- respect to their interrelationship; requires the Department of Health to establish a committee consisting of Department of Health and local health department representatives;
- provides for the responsibilities of the committee; and
- requires the Health Advisory Council to make a binding decision on the goals and budget of federal grants if the committee is unable to achieve unanimity on the goals and budget.

VEHICLE AMENDMENTS FOR ALL TERRAIN VEHICLES

SB 22

Sen. Scott Jenkins

This bill amends sections 41-6a-102, 41-6a-1509, 41-22-2, 53-8-205 and 53-8-206. In addition to amending definitions, it amends driver license requirements to require a driver license to operate a street-legal ATV, requires that the operator of an ATV on a highway with a posted speed limit higher than 45 mph shall operate the ATV on the extreme right hand side of the roadway and equip the ATV with a reflector or reflector tape. It also requires the operator of a motor vehicle to have in their possession a safety inspection certificate or other evidence of compliance with safety inspection requirements, and it limits to \$7.00 the labor fee for safety inspecting an ATV.

Effective Date: This has an effective date of July 1, 2009.

ONLINE VOTER REGISTRATION

SB 25

Sen. Peter Knudson

This bill:

- allows the lieutenant governor to create an electronic system for voter registration;
- addresses the information and authorization required from an applicant for voter registration who uses the electronic system;
- authorizes the use of an applicant's signature obtained from driver license or identification card records for voter registration purposes;
- authorizes the lieutenant governor to implement additional security measures in connection with the electronic voter registration system;
- requires the lieutenant governor to forward an applicant's materials to the appropriate county clerk for processing; and
- requires the Driver License Division to provide a digital copy of an applicant's driver license or identification card record to the lieutenant governor or county clerk.

OPEN AND PUBLIC MEETINGS ACT - MEETING RECORD

SB 26

Sen. Peter Knudson

This bill clarifies that the minutes of a meeting must include information requested to be added by a member only if that information was part of the proceedings of the meeting. It provides specific circumstances as to when the written minutes of an open meeting become a public record, requires a public body to establish and implement procedures for approval of written minutes and requires that a recording of an open meeting must be available to the public for listening within three business days after the meeting. The bill repeals a requirement that a recording must be converted to written minutes within a reasonable time upon request and provides that a meeting recording is not required for site visits or traveling tour or for certain small local districts.

ELECTION LAW CHANGES

SB 27

Sen. Peter Knudson

This bill:

- clarifies the requirements to be legally entitled to vote when voting in a precinct outside of one's own;
- changes the date for the Western States Presidential Primary election canvass;
- changes numerous provisions that require specific placement of various ballot items to more general placement requirements;
- clarifies that a proposed constitutional amendment is a "measure" for the purposes of Title 20A, Chapter 7, Issues Submitted to the Voters;
- changes the unaffiliated candidate pledge to include a pledge concerning campaign financial disclosures;
- changes filing deadlines for certain city, town, or local district offices;
- allows an unaffiliated candidate for President or Vice President of the United States to use a designated agent to file a certificate of nomination; and
- clarifies that a write-in candidate must file a declaration of candidacy in person or through a designated agent.

PROHIBITED ACTIVITIES OF GANG OFFENDERS

SB 28

SEN. JON GREINER

Under newly enacted 76-9-804 a person who has been convicted of a crime for which the penalty has been enhanced by a gang enhancement may not possess a dangerous weapon, ammunition or a facsimile of a firearm for 5 years from the date of conviction. In this section "dangerous weapon" includes those defined under either 76-10-501 the narrow definition which applies to part 5 of chapter 10 dealing with possession of weapons or the broader definition in 76-1-601 which deals with weapons used in the commission of a crime.

A violation of this section is a class A misdemeanor. As a practical matter this will apply mostly to offenders who have had misdemeanor convictions enhanced by the “in concert with” enhancement. Those who have previously been convicted of a felony will be restricted persons and receive a greater penalty under current provisions of law.

SAFE DRINKING WATER ACT AMENDMENTS

SB 29

Sen. Dennis Stowell

This bill amends the Safe Drinking Water Act impacting the addition or removal of fluorine in a public water system owned by a corporation. It requires the majority of the voting shareholders of a corporate public water system to approve the addition or removal of fluorine in the public water system and also requires a corporate public water system to provide notice of fluorine content in certain circumstances.

SALES AND USE TAX DEFINITIONS RELATING TO PROPERTY

SB 35

Sen. Wayne Niederhauser

This bill amends the Sales and Use Tax Act relating to definitions. This bill modifies the definitions of “permanently attached to real property” and “tangible personal property”; and makes technical changes.

SITING OF HIGH VOLTAGE POWER LINE ACT

SB 41

Sen. Peter Knudson

This bill:

- requires a public utility to notify an affected entity and affected landowner when applying for a land use permit to construct a high voltage power line;
- requires a public utility to conduct public workshops and distribute information to the public on the proposed high voltage power line; and
- authorizes a public utility or local government to appeal a high voltage power line route to the Utility Facility Review Board.

RESTRICTING THE MOVEMENT OF A VEHICLE “BOOTING” VEHICLES

SB 50

Sen. Brent Goodfellow

This bill enacts section 41-6a-1409 and prohibits immobilizing vehicles at certain locations where specific signage does not exist, and it provides exceptions to signage requirements and maximum fees for removal of an immobilization device.

RESTITUTION FUND ACCOUNT

SB 51

Sen. Daniel Liljenquist

§77-38a-202 already required a prosecutor, at the time of entry of conviction or entry of any pleas disposition in a felony or class A misdemeanor case, to provide to the court the names of all victims and third party claimants, the actual or estimated amount of restitution and whether the defendant has agreed to pay a specified amount of restitution as part of a plea deal. If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes must also be provided to the court. That was existing language.

This bill adds additional provisions regarding prosecutors and restitution collection and the handling and accounting thereof. The new amendment provides that the prosecution office handling the case may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of crime victims into an interest bearing account in accordance with the State Money Management Act, pending distribution of the funds. In the event restitution funds are deposited in an interest bearing account, the prosecution office shall distribute any interest that accrues in the account to each crime victim on a pro rata basis. If all crime victims are made whole and funds remain, distribute the remaining funds to the state Division of Finance for deposit to the Office of Crime Victims Reparations. This section does not prevent an independent judicial authority from collecting, holding, and distributing restitution.

AWARDING OF ATTORNEY FEES

SB 53

Sen. Stephen Urquhart

This hard fought bill will make it easier for public attorneys to advise their clients. It provides that attorney fees may not be awarded under the private attorney general doctrine.

MILITARY INSTALLATION DEVELOPMENT AUTHORITY AMENDMENTS

SB 56

Sen. Sheldon Killpack

This bill

- authorizes the military installation development authority to levy a municipal energy sales and use tax, municipal telecommunications license tax, and a transient room tax;
- prohibits municipalities from levying a municipal energy sales and use tax, municipal telecommunications license tax, or a transient room tax in a project area described in a project area plan adopted by the military installation development authority;
- provides for a portion of sales and use tax revenues generated within a project area described in a project area plan adopted by the military installation development authority to be distributed to the military installation development authority;
- prohibits municipalities, local districts, and special service districts from annexing land within a military installation development authority project area without the consent of the military installation development authority;
- authorizes the military installation development authority to issue industrial revenue bonds and provides for the authority to be subject to the Utah Industrial Facilities and Development Act;
- authorizes the military installation development authority to issue assessment bonds and provides for the authority to be subject to the Assessment Area Act;
- modifies the definitions of "base taxable value," "military land," "project area," "publicly owned infrastructure and improvements," and "taxing entity" and eliminates the definition of "record property owner" under the Military Installation Development Act;
- modifies and clarifies the status of the military installation development authority to provide that it has statewide jurisdiction, that its purpose is to facilitate the development of military land, and that it is a political subdivision of the state and a public corporation;
- modifies the powers of the military installation development authority, including giving it the power to:
 - acquire an interest in property outside a project area, if the board considers it necessary for fulfilling the authority's development objectives; and
 - exercise exclusive police power within a project area;
- prohibits the military installation development authority from itself providing law enforcement or fire protection service;
- provides for the distribution of some tax increment revenue; requires some revenues to be used for municipal services within project areas;
- expands the military installation development authority's exemption from county and municipal ordinances to include an exemption from all county and municipal ordinances and regulations, not just those related to land use;
- exempts the military installation development authority from the jurisdiction of local districts and special service districts;
- requires the military installation development authority to provide notice of the establishment of project areas;
- authorizes the board of the military installation development authority to delegate powers

- to its staff;
- provides that board appointees serve at the pleasure of and may be removed and replaced by the appointing authority;
- modifies requirements for preparing and adopting a project area plan;
- requires the board of the military installation development authority to adopt a project area budget before receiving or using tax increment and authorizes the board to amend a project area budget;
- provides that improvements become subject to property tax in the year during which the military installation development authority issues a certificate of occupancy;
- modifies a provision relating to the allowable uses of tax increment; and
- provides that, upon the dissolution of the military installation development authority, all title to its property vests in the state.

AMENDMENTS TO PROPERTY TAX NOTICE, PUBLIC HEARING, AND RESOLUTION PROVISIONS

SB 65

Sen. Dennis Stowell

This bill modifies property tax notice, public hearing, and resolution requirements if a taxing entity seeks to levy a tax rate that exceeds the certified tax rate. It also addresses exceptions to the property tax notice or public hearing requirements.

UNINCORPORATED AREAS AMENDMENTS

SB 73

Sen. Karen Mayne

This bill pertains to unincorporated areas of counties and modifies the municipal annexation process. It prohibits the filing of an annexation petition if the area proposed to be annexed is within a proposed township and repeals a provision prohibiting a municipality from denying, under certain circumstances, a petition proposing the annexation of an area located in a county of the first class. The bill also modifies the process for establishing a township and the authority of a county legislative body in establishing a township. It provides a process for withdrawing an area from a township, provides a process for dissolving a township, repeals a provision limiting annexations of territory in a township and repeals a provision repealing in 2010 a provision that prohibits an annexation by a municipality in a county of the first class under certain circumstances.

PROTECTION OF CONSTITUTIONALLY GUARANTEED ACTIVITIES IN CERTAIN PRIVATE VENUES

SB 78

SEN. MARK MADSEN

Although this is a civil statute, it does have ramifications for the Attorney General as the Attorney General is authorized to enforce its provisions and request relief in behalf of any individual suffering a loss because of a violation.

This bill prohibits any person from establishing a policy or rule which keeps any individual from transporting or storing a firearm in a motor vehicle on any property designated for motor vehicle parking if the firearm is legally possessed security encased and not in plain view. This bill is in reaction to a case of a few years ago where America On-Line disciplined employees for having weapons in their vehicles in the parking lot. It also has provisions for injunctive relief, punitive damages, attorneys fees and cost.

Schools, government entities and religious organizations are not subject to the provisions of this bill.

FIRE LIABILITY MODIFICATIONS

SB 80

Sen. Margaret Dayton

This bill makes amendments to §76-6-101 - Definitions, and to §76-6-104.5 - Abandoned Fire.

- A definition of “fire” is added in the former section to read, ““Fire” means a flame, heat source capable of combustion, or material capable of combustion that is caused, set, or maintained by a person for any purpose.”

The value of damage that determines the levels of offense in the latter section are amended.

- It will now be a class C misdemeanor if one is found guilty of abandoning a fire from which no property damage results.
- If the abandoned fire results in less than \$1,000 damage, it will be a class B misdemeanor.
- It becomes a class A misdemeanor if property damage pf \$1,000 or greater results from the abandoned fire.

Also, the following language is added to 76-6-104.5, “A fire spreading or reigniting is prima facie evidence that the person did not completely extinguish the fire as required by Subsection (1)(a).”

The bill also makes amendments to §56-1-15 - Fire caused by railroad operations, in case you are interested in the civil liability of railroads for fires caused as a result of train operations.

ILLEGAL IMMIGRATION
(from the 2008 Legislative Session)

SB 81

Sen. John “Bill” Hickman

This bill was passed during the 2008 legislative session but its effective date was delayed until July 1, 2009. Accordingly, it is included in the 2009 summaries.

The issue of illegal immigrants probably received more press attention than did any other issue to come before the 2008 general legislative session. Other than the budget, illegal immigrants probably took up as much or more legislative time as any other issue. Based upon comments from a number of legislators, the issue also generated more communication from constituents than did any other. A number of bills addressing a variety of illegal immigrant related issues were filed. Most did not make it and those that did, including this one, were extensively amended during the legislative process. SB 81 was kind of the omnibus illegal immigration bill.

This bill has an effective date of July 1, 2009. Accordingly, make sure to come to next year’s legislative update because this thing is bound to be changed during the 2009 session.

All public attorneys and state and local law enforcement officers will need to familiarize themselves with the provisions of this bill. It has very broad impact across many agencies of government. I includes both criminal and civil mandates.

SHERIFFS are mandated to make a reasonable effort to determine the citizenship status of persons charged with a felony or with DUI when the person is confined to the county jail for a period of time. If the person is determined to be a foreign national, the sheriff is to make a reasonable effort to verify whether the person has been lawfully admitted into the United States and, if so, whether the person's lawful status has expired. If the sheriff is unable to verify the confined person's immigration status from documents in the person's possession, the sheriff is to attempt to verify that status within 48 hours of the person's confinement through contacting ICE or any other office or agency designated for citizenship status verification by the United States Department of Homeland Security. Further, the sheriff is to notify Homeland Security of any person whose lawful citizenship status cannot be verified.

BAIL: For purposes of setting bail, the bill provides that it is a rebuttable presumption that a person who is verified to be a foreign national not lawfully admitted into the United States is at risk of flight.

ENFORCEMENT OF FEDERAL IMMIGRATION LAWS: The Attorney General is required to negotiate a memorandum of understanding with the United States Department of Justice or the United States Department of Homeland Security for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel.

Units of local government will be prohibited from enacting any ordinance or policy that limits or prohibits a law enforcement officer or government employee from communicating or

cooperating with federal officials regarding the immigration status of persons within the state.

CRIMINAL PROVISIONS: The bill creates a new class A misdemeanor. It will be unlawful for a person to:

- transport an alien into the state or for a distance of more than 100 miles within the state for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is illegally in the United States; or
- knowingly and with the intent to violate federal immigration law, conceal, harbor, or shelter from detection an alien, knowing or in reckless disregard of the fact that the alien is illegally in the United States.

It will not be a violation of the above explained class A misdemeanor to provide charitable or humanitarian assistance to an alien, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a location where the assistance is provided, using private funds. It will also not be a violation of the act for a church to invite, call or allow an alien to be a minister or missionary, so long as the minister or missionary is a volunteer who is not compensated as an employee. Room, board, travel, medical assistance, and basic living expenses may be provided for such volunteers. However, the volunteer alien must have been a member of the religious denomination or organization for at least one year.

ABC COMMISSION: The bill provides that the Alcoholic Beverage Control Commission may not grant a restaurant liquor license or private club license to a person who is not lawfully in the United States.

IDENTIFICATION DOCUMENTS: The bill enacts new Chapter 99a of Title 63 - Identity Documents and Verification. The new chapter details which governmental, educational and private entities may create and issue identification documents. With two exceptions, those identification documents issued by public entities may be issued only to United States citizens, nationals, or legal permanent resident aliens.

The two exceptions are **for issuance or renewal of a Driving Privilege Card under §53-3-207** and for an identification document issued by a public school or state or private educational institution that is valid only for use on the educational institution's campus or facility.

The new Chapter 99a also makes provisions for the issuance of identification documents to aliens having valid documentation of approved or pending immigration status.

STATUS VERIFICATION OF JOB APPLICANTS: In an attempt to take away the financial incentive of jobs for illegal aliens, the bill requires public employers to register with and use a Status Verification System to verify the legal status of new employees. Also, public employers will not be allowed to enter into contracts with a contractor for the physical performance of services within the state unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees. The act makes it unlawful to discharge a lawful employee while retaining an unauthorized alien in the same job category. The bill contains a specific mandate that these provisions shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Any agency or political subdivision of the state is required to verify the lawful status of an individual who applies for a state or local public benefit as defined by federal law or for a federal public benefit that is administered by the agency or the political subdivision. Applicants for state or local public benefits are required by the act to certify their lawful presence in the United States.

APPLICATION FOR PUBLIC BENEFITS - INCLUDING CRIMINAL PENALTIES:

Any individual who knowingly and willfully makes a false or fraudulent statement or representation in conjunction with an application for public benefits is subject to the criminal penalties for making a written false statement under Subsection 76-8-504(2) or for fraudulently obtaining public assistance program benefits under Sections 76-8-1205 and 76-8-1206 or unemployment compensation under Section 76-8-1301. If the certification constitutes a false claim of U.S. citizenship under 18 U.S.C., Sec. 911, the agency with which the claim is filed shall report the false application to the United States Attorney for the applicable district.

VERIFICATION NOT REQUIRED UNDER SOME CIRCUMSTANCES: Verification of lawful presence in the United States is not required from any person who is seeking or applying for:

- any thing or service for which lawful presence in the United States is not restricted by law;
- emergency medical care;
- short-term, noncash, in-kind emergency disaster relief;
- public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases;
- programs or assistance such as soup kitchens, crisis counseling and intervention;
- short-term shelter providers, specified by the United States Attorney General, which deliver in-kind services at the community level, including through public or private nonprofit agencies, and do not condition the assistance provided on the financial resources of the recipient and which services are necessary for the protection of life or safety;
- payment of the nonresident portion of tuition at state institutions of higher education as set forth in §53B-8-106; and
- application for certain licenses issued under the Utah Uniform Securities Act if the applicant is registered with the Financial Industry Regulatory Authority and files an application with the state Division of Securities through the Central Registration Depository. (I read the applicable statute and I still don't know what this is about.)

The 2009 legislature, in SB 39, added the following to this list:

- a state public benefit to be given to an individual under pursuant to the Utah Retirement and Insurance Benefit Act;
- a home loan that will be insured, guaranteed, or purchased by the Federal Housing Administration, the Veterans Administration, or any other federal agency, as well as a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under this provision; and
- an enterprise as defined in 12 U.S.C., Sec. 4502 (all kinds of different financial enterprises);.

The bill provides, subject to the availability of funding, for the establishment of a Fraudulent Documents Identification Unit by the Attorney General for the primary purpose of investigating, apprehending, and prosecuting individuals who participate in the manufacture, sale or distribution

of fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state.

Effective Date: This bill has an effective date of July 1, 2009.

IMPACT FEES REVISIONS

SB 84

Sen. Gregory Bell

This bill:

- modifies the definition of "development approval" for public entities that may develop without written authorization;
- modifies the definition of "public safety facility";
- shortens from 14 to ten days the period of time before a public hearing date that a notice of a capital facilities plan or amendment is required to be given;
- shortens from 14 to ten days the period of time before adoption of an impact fee enactment that a local political subdivision is required to submit a copy of the written impact fee analysis and applies that time period to a new requirement to obtain a written certification;
- modifies impact fee reporting requirements;
- requires a local political subdivision to obtain a written certification from the person or entity that prepares the written impact fee analysis and specifies the content of that certification;
- shortens from 14 to ten days the period of time before a public hearing that a local political subdivision and private entity is required to make a copy of the impact fee enactment available and to mail a copy of the enactment; and
- modifies a provision restricting the imposition of an impact fee to pay for a public safety facility.

HOMICIDE AMENDMENTS

SB 85

Sen. Stephen Urquhart

The purpose of this bill is to remedy Utah's current mitigation of murder or aggravated murder statute to have it conform with, and take advantage of, the U.S. Supreme Court case Patterson v. New York. Currently Utah's murder mitigation statutes allow a defendant to simply raise a mitigation (such as saying he was under extreme emotional distress at the time of the killing), but then requires the State to actually disprove that mitigation beyond a reasonable doubt.

This bill will now shift the mitigation language that has till now been placed within the aggravated murder and murder statutes to Utah's "special mitigation" statute 76-5-205.5, which already exists. Because it is constitutional to allocate the burden of proof in establishing mitigation to the defendant by a preponderance of the evidence, and that is what juries likely do in reality upon

deliberation, this is a proper and good change in the law. Now if a defendant were to claim that he was under extreme emotional distress when he killed his victim, this law will place the burden of proving that fact, by a preponderance of the evidence, upon the defendant. If a jury finds that the killing was done under such extreme emotional distress (mitigation is found), a special jury verdict would have to be returned to that effect.

METAL THEFT AMENDMENTS AND PENALTIES

SB 90

Sen. Jon Greiner

You will recall that about two or three years ago the legislature enacted a rather comprehensive metal thefts statute – §76-10-901 et seq. This bill makes a couple of additions to that statute, as well as adding some language regarding the liability of used metal dealers.

§76-10-901 is amended to add catalytic converters and wire that has been burned or that has the appearance of having been burned to the list of “suspect metal items.” A metal dealer must take special care when receiving “suspect metal items.”

The bill adds two new sections to the theft part of the Criminal Code:

- §76-6-402.5, provides that it is a defense against a charge of theft and a defense against a civil claim for conversion if any used metals dealer has acted in compliance with Regulation of Metal Dealers statute.
- §76-6-412.5 provides that any defendant who commits or attempts to commit theft of regulated metal, and in the course of committing or attempting to commit the theft causes damage to any person's real or personal property other than the regulated metal, the defendant is liable for restitution for all costs incurred due to the damage to the person's property.

Effective date: The bill provided that it was to become effective upon signing by the governor. The governor signed the bill on March 25, 2009.

ELECTRONIC COMMUNICATION HARASSMENT AMENDMENT

SB 91

Sen. Jon Greiner

This bill amends sections 31A-21-501 and 76-9-201 and defines “adult” and “minor” (18 years or older and less than 18 years, respectively) and changes the penalties for a violation. A first offense committed against an adult is a class B misdemeanor; a second or subsequent offense committed against an adult is a class A misdemeanor if all prior qualifying enhancing offenses were committed against adults; a second or subsequent offense committed against an adult is a third degree felony if any of the prior qualifying enhancing offenses was committed against a minor. An offense committed against a minor is a class A misdemeanor; a second or subsequent offense

committed against a minor is a third degree felony. Criminal prosecution under this section does not preclude bringing a civil action for damages resulting from electronic harassment.

LOCAL GOVERNMENTAL COOPERATION IN EDUCATION MATTERS

SB 92

Sen. Patricia Jones

This bill allows local governmental entities and school districts to contract and cooperate with one another in matters affecting the education of their residents. It allows a local governmental entity to specify the purpose for which public funds are disbursed to a school district and to specify that public funds disbursed to a school district shall be used within the boundaries of the local governmental entity. The bill also allows a representative of county government to participate in local school board discussions.

UNDERGROUND SEWER UTILITIES FACILITIES AMENDMENTS

SB 94

Sen. Jon Greiner

This bill:

- requires an owner's permission before an excavator may access or enter the owner's property or dwelling to locate a sewer lateral;
- requires an operator or person installing or replacing a sewer lateral clean out beginning August 1, 2009 to install or replace the lateral so that it can be located;
- requires sewer operators to maintain records beginning August 1, 2009 identifying the location of new, replaced, or contractor-identified sewer lateral clean outs; and
- requires sewer operators to provide information pertaining to a sewer lateral clean out location.

MOTOR FUEL THEFT PENALTIES

SB 98

Sen. Jon Greiner

This bill creates the new crime of Theft of Motor Vehicle Fuel. One is guilty of the offense if the fuel is removed from the retail establishment with the intent to deprive the business of the fuel without full making full payment for the fuel. The penalties for the new crime are pegged to the general theft classification statute, §76-6-412.

The bill also provides that, in addition to the penalties for the theft, the thief's driver license may be suspended for up to 90 days upon a conviction of Theft of Motor Vehicle Fuel. The suspension is at the discretion of the sentencing court, so, if you want the suspension, you'll have to remember to ask the judge to make the order. DLD will not issue the suspension unless they receive an order to that effect from the court.

COMMUNICATIONS AND MORTGAGE FRAUD PENALTY AMENDMENTS

SB 107

Sen. David Hinkins

This bill removes similar language from the penalties sections of the Mortgage Fraud, 76-6-1204, and Communications Fraud, 76-10-1801, statutes. The now deleted language from the two statutes reads:

- 76-6-1204: “a second degree felony when the object or purpose of the commission of an act of mortgage fraud is other than the obtaining of something of monetary value; . . .”
- 76-10-1801: “a second degree felony when the object of the scheme or artifice to defraud is other than the obtaining of something of monetary value; . . .”

There were no other changes to either statute.

OBSTRUCTION OF JUSTICE AMENDMENT

SB 112

Sen. Ralph Okerlund

Adds the act of advising a person of the existence of an order for a wiretap, or the pending application for a wiretap to the predicates for obstruction of justice. A needed and overdue fix.

PAYMENT OF MOBILE HOME PARK RELOCATION EXPENSES

SB 115

Sen. Wayne Niederhauser

This bill authorizes counties and municipalities to use certain property tax revenues to pay relocation expenses of mobile home park residents displaced by development activities that change the use of the property. It also authorizes taxing entities to share certain property tax revenues with counties and municipalities for the purpose of paying those relocation expenses.

CRIMINAL PENALTY AMENDMENTS

SB 116

SEN. DANIEL LILJENQUIST

This was a SWAP bill and a priority for the DUI sub-committee of USAAV.

It provides that “a person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the persons violation of 41-6a-502 or death as a result of the persons violation 76-5-207 whether or not the injuries arise from the same episode of driving”. That modification to 41-6a-503 Penalties for Driving Under the Influence establishes that there is a separate count for each victim.

There is a similar provision in 76-5-207 Automobile Homicide and another in 58-37-8 regarding separate charges for each person injured when the person possesses a controlled substance by consumption, operates a motor vehicle and causes injuries or death.

Although this change may or may not result in any stiffer penalties, it is extremely important to victims to have their loss recognized by the charges filed against the perpetrator. The issue was brought to our attention by Chou Chou Collins in the Salt Lake County District Attorney's Office. The extreme importance to victims was poignantly expressed by Art and Jaynie Brown of Mother's Against Drunk Driving who suffered the loss of an infant grandson and serious injury to their daughter in an alcohol related collision.

These multiple counts however do not increase penalty enhancements. The definition of "conviction" in 41-6a-501 definitions was amended to include any conviction "arising from a separate episode of driving".

PARENTAL RESPONSIBILITY FOR JUVENILE CRIMINAL GANG OFFENSE COSTS

SB 118

Sen. Jon Garner

Utah has a statute that is intended to allocate liability for property damages caused by a wayward child, to their parent, if the child is found criminally responsible for charges of criminal trespass or criminal mischief – including graffiti. This bill takes advantage of that statute, 78A-6-1113, by now adding language that states if those crimes were done "for the benefit of, at the direction of, or in association with any criminal street gang" or "to gain recognition, acceptance, membership, or increased status with a criminal street gang" then the parent may be held liable for the damages caused by the little gang banger, up to \$5,000.00. (So keep an eye on those kids).

RETIREMENT AMENDMENTS

SB 127

Sen. Daniel Liljenquist

This bill amends the definition of defined contribution to include deferred compensation plans; allows an employer to pay required retirement contributions to a non-qualified compensation plan administered by the board, if the employer is not participating in a qualified defined contribution plan; allows the retirement system to deduct from payments made to beneficiaries for money that is owed to the retirement system; repeals transition language related to eligibility of an enhanced public safety retirement cost-of-living adjustment; provides an application process for employers to participate in the Firefighters Retirement System. This was a bill supported by firefighters.

LAW ENFORCEMENT IN LOCAL DISTRICTS

SB 131

Sen. Scott Jenkins

One of the more interesting topics on the Hill this year, at least for some city and county officials, was the modification of the types of services that a local district may provide. No one will argue that this bill was primarily intended to apply in Salt Lake County. The bill replaces “extended police protection” with “law enforcement service” in the list of services that a local district may be created to provide. No longer must the creation of a local district go to voters for their approval if the local district is created to provide law enforcement service. The bill also provides some taxation changes. Any county attorney involved in a law enforcement district will want to read this bill 10 or 12 times.

ABUSE OR NEGLECT OF DISABLED CHILD

SB 133

SEN. JOHN VALENTINE

In reaction to a particular case, this bill was filed to include the *mens rea* of “intentionally, knowingly, or recklessly” in the body of the section. Despite impassioned descriptions by its proponents in the legislature, it made no changes to the elements of the crime as those mental states applied by virtue of existing law in 76-2-102.

TRANSPORTATION FUNDING AMENDMENTS

SB 134

Sen. Stephen Urquhart

This bill prohibits the state, counties, and municipalities from spending project-specific funds allocated through a congressional authorization act for a transportation project that is eligible for funds apportioned to the state in support of the statewide transportation improvement program, unless the specified project is included on the statewide transportation improvement program.

LOCAL DISTRICT TAXING AUTHORITY

SB 135

Sen. Curtis Bramble

This bill prohibits service areas that do not have elected boards from levying and collecting a property tax, with certain exceptions. It also provides a method for service areas to change the board of trustees so that all members are elected.

EMPLOYER ELECTION RETIREMENT AMENDMENTS

SB 139

Sen. Curt Bramble

This bill recognizes the tough economic times and keeps the 4% COLA conversion window open until December 1, 2012. This means that entities may elect to join the system providing a maximum COLA benefit of 4%. The window was scheduled to slam shut. Some cities and counties may have wanted to participate, but may have been too strapped financially.

DISPOSITION OF A DEAD BODY

SB 142

Sen. Allen Christensen

The intent of this bill is to make certain a dead body is not prematurely or improperly made unavailable for examination by the medical examiner's office (i.e, cremation or being shipped out of state, or buried at sea). The bill requires that within 3 days of the issuance of a death certificate, the medical examiner's office will review that death certificate before issuing a permit to allow a body to be cremated, shipped, etc. The bill makes it a class B misdemeanor for a person to "engage in any conduct" that makes a body unavailable for examination without first obtaining a permit for its destruction.

Anti-*Shondel* language was included in the bill so that the charge desecration of a body would take precedence over this charge. There does not appear to be a *Shondel* problem with obstruction of justice as that statute requires proof of additional elements.

PUBLIC SAFETY RETIREES DEATH BENEFIT REVISIONS

SB 145

Sen. Jon Greiner

This bill allows an officer to elect to take a lower retirement benefit in exchange for providing the officer's surviving spouse to receive a death benefit of 75% instead of the 65% rate currently paid. Current retirees have the opportunity to purchase the additional spousal benefit.

DRIVER LICENSE AMENDMENTS LIMITED DRIVER LICENSE

SB 147

Sen. Lyle Hillyard

This bill amends section 53-3-220 and permits the Driver License Division to extend a limited driving privilege to and from a person's place of employment when the person's original denial, suspension, revocation or disqualification involved certain driving under the influence offenses:

- if the person has had the first period of denial, suspension, revocation, or disqualification extended for a period of at least three years;
- if the Driver License Division receives a letter from the person's physician saying;
 - that to the physician's knowledge the person has not used any un-prescribed substance or narcotic within the last three years, and
 - that, to the physician's knowledge, the person has no physical, emotional, or mental impairment that would affect the person's ability to operate a motor vehicle safely; and
- if, for a period of one year prior to the date of the request for a limited driving privilege, the person has not been convicted of a violation of any motor vehicle law or operated a motor vehicle that was in an accident whether or not the person was at fault.

This privilege is limited to commuting to and from work or school and may be granted only once during a denial, suspension, revocation or disqualification period.

COUNTY AND MUNICIPAL LAND USE AMENDMENTS

SB 153

Sen. Mark Madsen

This bill prohibits counties and municipalities from requiring a person, as a condition of land use application approval, to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application. It also prohibits counties and municipalities from charging fees that exceed applicable costs; and requires counties and municipalities, on request, to itemize and show the basis of fees they do impose.

GIFTS AND MEAL PROVISIONS FOR PUBLIC OFFICIALS

SB 156

Sen. Gregory Bell

This bill addresses the definition of "tangible personal property," includes admission to various events in the definition of "gift" and requires reporting of meals costing more than \$25 provided to a public official under certain circumstances.

PROPERTY TAXATION AND REGISTRATION OF AIRCRAFT

SB 157

Sen. Mark Madsen

This bill provides that, for purposes of property taxation of an air charter service, operating property does not include an aircraft that is used by the air charter service for air charter and is owned by a person other than the air charter service. It reduces the registration fee for an aircraft used by an air charter service for air charter from .4% to .25% of the average wholesale value of the aircraft; and makes technical changes.

REPEAL OF MAXIMUM CHARGE TO PUBLISH LEGAL NOTICE
SB 161 **Sen. Kevin Van Tassell**

This bill amends the maximum charge to publish a legal notice in a fourth or fifth class city.

USE OF CAMPAIGN FUNDS AMENDMENTS
SB 162 **Sen. John Valentine**

This bill prohibits the use of campaign and officeholder funds for a purpose that would result in the candidate or officeholder recognizing the funds as taxable income under federal tax law.

GAMBLING AMENDMENTS
SB 169 **Sen. Daniel Liljenquist**

Fringe Gambling. This bill was created to address gambling that is designed to skirt the law by being on the “fringe” of other lawful activities, and is currently difficult to prosecute. The bill defines “fringe gambling” as “any gambling, lottery, or video gaming device which is: (I) given, conducted, or offered for use or sale by a business in exchange for anything of value; or (ii) given away incident to the purchase of other goods or services.”

The targets of this bill are businesses such as internet cafes which are in reality gambling cafes. In these establishments, a person may purchase \$30 dollars worth of “internet” or “phone” time, and receive a card that activates a gaming session (such as poker) on a store computer. Most of the people that purchase the internet time do not even know that internet time is being sold to them! They are simply gambling. The bill recognizes that some legitimate lottery or gaming pieces are given out (such as McDonald’s Monopoly game), and therefore creates an exception for “promotional activity which is clearly occasional and ancillary to the primary activity of the business.”

Sadly, this useful bill was gutted in the last day of the session for reasons beyond our control. **The effective date of this bill is now slated for April 1, 2010, *after* next year’s session.** We shall see whether it stays in its current form until then.

JUDICIARY AMENDMENTS
SB 170 **Sen. Lyle Hillyard**

- This bill amends thirteen (13) sections, the noteworthy amendments of which are:
- adds domestic violence to the list of offenses ineligible for diversion (duplicative of section

- 77-36-2.7(6));
- clarifies when justice court judges will stand for retention election (the 2010 general election if the justice court judge was appointed prior to January 1, 2009);
- amends the unlawful detainer statute;
- requires electronic transmission of an order of protection, ex parte protective order, or child protective order to law enforcement; and
- repeals section 76-5-411 regarding the admissibility of out-of-court statements of children victims of sexual abuse (those statements are already governed by rule 15.5 of the Utah Rules of Criminal Procedure).

MUNICIPAL ANNEXATION AMENDMENTS

SB 171

Sen. Scott Jenkins

This bill modifies the definition of “affected entity,” which includes those entities that, among other things, are entitled to protest a proposed annexation, so that counties of the third, fourth, fifth, and sixth class are not included unless the area proposed for annexation includes residents or commercial or industrial development. School districts are included only if their boundary is proposed to be adjusted as a result of the annexation. The bill defines “unincorporated peninsula” and modifies a provision requiring the owner’s signature on an annexation petition if only part of the parcel is proposed to be included in an annexation to specify that property with multiple parcel numbers but owned by the same owner is considered to be a single parcel. A municipality may annex an area without a property owner annexation petition if the area is an unincorporated island or peninsula of 50 acres or less and the municipality and county agree the area should be annexed.

CRIMINAL RESTITUTION AMENDMENTS

SB 182

Sen. Curtis Bramble

This bill:

- provides that there is no statute of limitations on criminal restitution orders;
- provides that the victim shall be entitled to recover interest, collection fees and attorney fees if the defendant fails to obey a court order for payment of restitution;
- provides that full payment of a restitution order includes the payment of any applicable collection fees, attorney fees, and interest; and
- clarifies that there is no statute of limitations on any restitution judgment that is not paid in full by May 12, 2009.

**VIOLATION OF PROTECTIVE ORDERS – DISMISSAL
OR AMENDMENT ALLOWED WHEN PETITIONER
ACTS IN CONTRAVENTION**

SB 183

Sen. Scott McCoy

This bill amends sections 78B-7-105 and -115 and provides a respondent in a protective order a basis for moving for dismissal or amendment of that protective order if:

- the order has been in effect for at least one year;
- the basis for the protective order no longer exists;
- the petitioner has repeatedly induced the respondent to violate the protective order;
- the petitioner's actions demonstrate they no longer have a reasonable fear of the respondent;
- the respondent has not been convicted of a protective order violation or any crime of violence subsequent to issuance of the protective order; and
- the respondent has no unresolved charges of crimes involving violent conduct on file with the court.

The court shall enter sanctions against either party if the court determines that either party acted in bad faith or with the intent to harass or intimidate either party. This bill also requires protective orders under this section to include notice to the petitioner that such orders may be dismissed or amended if the conditions listed above are met.

ALCOHOL AMENDMENTS

SB 187

Sen. John Valentine

This is the big alcohol control modernization bill that got so much media coverage during the legislative session. At 213 pages, I'm not going to even try to mention all of its provisions. There are, however, several parts of the bill that have special application to prosecutors and government civil side attorneys and to law enforcement officers. Much of this was taken from a very good summary of the bill that was prepared by Earl Dorius, Deputy Director of Licensing and Compliance at the DABC, and the guy who knows more about Utah's alcohol laws than anyone else alive. Earl was kind enough to share his summary with me.

The first thing prosecutors and cops need to know is that this bill contains no criminal provisions. Accordingly, unless an officer is directly assigned to the enforcement of the new licensing rules, etc., his or her official involvement with alcohol will likely, as has always been the case, result from people's mis-use of the product, not from these changes in Utah's alcohol access laws.

County and city attorneys whose duties are include licensing and zoning of businesses in which alcohol is sold will want to familiarize themselves with parts of the bill. That will especially be true if you have private clubs in your jurisdiction, most of which will now want to change status. Some private clubs may choose, however, to remain private. The bill creates four types of private clubs:

- Equity Clubs: Organized for a social, recreational, patriotic, or fraternal purpose; has members; limits access to members and their guests; owns, maintains, or operates a substantial recreational facility in conjunction with a club house such as a golf course or tennis facility; has at least 50% of members with full voting rights and an equal share of the equity of the club; allows for reciprocal guest privileges with other equity clubs.
 - Fraternal Clubs: Eagles, Elks, Moose, Etc.; organized for a social, recreational, patriotic, or fraternal purpose; has members; limits access to members and their guests; has no capital stock; has a representative form of government and a lodge system with a supreme governing body; allows for reciprocal guest privileges with members of same fraternal organization.
 - Dining Clubs: Commission determines based on square footage, seating capacity, portion used for dining vs. bar area, whether full meals are served, whether entertainment is suitable for minors, maintains 50% in food sales.
 - Social Clubs: Does not meet criteria for other clubs and wants to operate as a social club.
- As you might expect, there are different requirements regarding minors' access to each of these clubs.

Attorneys who are from a county in which there is a large resort which may now want to apply for one of the new Resort Licenses, will want to become familiar with those provisions. At most, however, that will apply to only four counties, because the bill puts a limit of four resort licenses in the entire state. The initial resort license fee is \$10,000, plus \$2,000 each for additional sublicense (a minimum of four are required), so the applicant will be out at least \$18,000 just to apply. That will probably cut down on the competition.

The bill allows the ABC Commission to waive the proximity restrictions for a new owner of a restaurant in situations where the prior owner was issued a restaurant license before a church, school, library, park or playground was located in proximity to the restaurant.

All state liquor stores and all package agencies will now be allowed to sell alcohol on election days.

In response to the recent Southern X-Posure case, the definition of "Intoxicated" is amended. The amended definition applies only to Title 32A, however. It may not have application for any criminal purposes.

"Intoxicated" means that a person: (The significant changes are underlined.)

- (a) is significantly impaired as to the person's mental or physical functions as a result of the use of:
 - (i) an alcoholic beverage;
 - (ii) a controlled substance;
 - (iii) a substance having the property of releasing toxic vapors; or
 - (iv) a combination of Subsections [(26)] (28)(a)(i) through [(c).] (iii); and
- (b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic beverage.

There's a whole bunch of additional stuff in the bill. If you need help getting to sleep, this bill is probably better than Somnifex.

IMPROVEMENT DISTRICT-PROVIDING ELECTRIC SERVICE
SB 188 **Sen. Dennis Stowell**

This bill authorizes an electric improvement district created after May 11, 2009 to provide electric service to a specified area if certain conditions are met.

ACQUISITION OF A BILLBOARD BY EMINENT DOMAIN
SB 190 **Sen. Wayne Niederhauser**

- This bill;
- modifies a provision relating to the authority of a billboard owner who is structurally modifying, upgrading, or relocating a billboard;
 - provides that a county or municipality is considered to have initiated the acquisition of a billboard structure if the county or municipality prevents a billboard owner from making modifications, as the billboard owner determines, to a billboard that is modified, upgraded, or relocated;
 - requires counties and municipalities considered to have initiated the acquisition of a billboard by eminent domain to pay just compensation; and
 - defines the just compensation that counties and municipalities are required to pay.

DRUG OFFENDERS REHABILITATION ACT AMENDMENTS
SB 202 **SEN. LYLE HILLYARD**

The DORA program which was expanded statewide last year has been drastically scaled back. The program was given three million dollars in one time funds for the next fiscal year. This bill requires the Utah Substance Abuse and Anti-Violence Coordinating Council to coordinate the implementation of this scaled back act. Most likely DORA will end up functioning in approximately four counties.

**COMMUNITY DEVELOPMENT
AND RENEWAL AGENCY AMENDMENTS**
SB 205 **Sen. Curtis Bramble**

- This bill:
- modifies the definitions of "base taxable value," "inactive airport site," "inactive industrial site," "project area budget";
 - authorizes an agency created by a county to undertake urban renewal, economic development, or community development within a town under certain circumstances;

- modifies a provision relating to a public entity's assistance or cooperation in urban renewal, economic development, or community development;
- modifies a provision relating to a resolution or interlocal agreement authorizing an agency to be paid tax increment or sales tax revenue;
- requires the taxing entity committee to adopt an organizing resolution at its first meeting;
- modifies the amount of tax increment to be paid under an urban renewal project area plan for an inactive airport site;
- extends the length of time that an agency may be authorized to be paid tax increment under an urban renewal project area budget for an inactive industrial site or an inactive airport site from 15 to 20 years;
- requires the applicable project area budget, resolution, or interlocal agreement to specify limits on the amount of tax increment and sales tax revenue that an agency will be paid and prohibits an agency from being paid more tax increment or sales tax than specified, unless otherwise agreed;
- prohibits an agency from using tax increment to pay for bonds or other obligations for financing a telecommunications facility;
- modifies a provision relating to funds for income targeted housing; imposes obligations on an agency that uses tax increment to pay for communication infrastructure or a communication facility;
- extends from 30 to 90 days the period of time within which an agency is required to file a copy of its annual budget after adopting the budget; and
- narrows application of a provision requiring an agency to allocate tax increment funds for housing to economic development project area budgets adopted before May 12, 2009.

UTAH PUBLIC NOTICE WEBSITE AMENDMENTS

SB 208

Sen. Stephen Urquhart

This bill:

- amends provisions of the Utah Code to allow posting of legal notices on a website;
- coordinates with HB 67, Public Hearings on Property Tax Increases;
- coordinates with SB 65, Amendments to Property Tax Notice, Public Hearing, and Resolution Provisions;
- coordinates with S.B. 73, Unincorporated Areas Amendments; and
- coordinates with S.B. 209, Land Use, Development, and Management Act Amendments.

LAND USE, DEVELOPMENT AND MANAGEMENT ACT AMENDMENTS

SB 209

Sen. Gregory Bell

This bill impacts county and municipal provisions relating to the notice required for a

proposed subdivision or an amendment to a subdivision and makes them apply to amendments only. It modifies county and municipal provisions relating to a hearing and notice requirement for a proposal to vacate, alter, or amend a public street or right-of-way to make the provisions apply to a proposal to vacate some or all of a public street, right-of-way, or easement, to replace the land use authority with the legislative body as the body responsible to hold a public hearing, and to provide notice. The bill modifies the required notice and eliminates the requirement for a planning commission recommendation on a subdivision plat in certain circumstances when the planning commission is not the land use authority. The bill further provides exceptions to a prohibition against separate ownership or conveyance of a parcel designated as a common or community area and modifies county and municipal provisions relating to the vacation, alteration, or amendment of a subdivision plat. It modifies the basis upon which a land use authority may approve the vacation, alteration, or amendment of a plat and modifies county and municipal provisions relating to the vacation or alteration of a public street or right-of-way.

REVISIONS TO MILITARY INSTALLATION DEVELOPMENT AUTHORITY ACT

SB 216

Sen. Mark Madsen

This bill modifies the definitions of "development project" and "project area," modifies the authority of the military installation development authority, provides that a project area may include specified private land, with the consent of the land's owner; and makes technical changes.

Effective date: This bill takes effect October 1, 2009.

REDISTRIBUTION OF SALES AND USE TAX

SB 235

Sen. John Valentine

This bill establishes procedures and requirements for the State Tax Commission to redistribute certain sales and use tax revenues from one county, city, or town to another county, city, or town under certain circumstances and allows a county, city, or town to file a petition for reconsideration with the State Tax Commission relating to a redistribution of certain sales and use tax revenues from one county, city, or town to another county, city, or town.

TAX AMENDMENTS

SB 248

Sen. Gregory Bell

This bill amends the Sales and Use Tax Act and related provisions to address certain local sales and use taxes relating to airports, highways, and public transportation. It amends the additional

public transit tax to expand the uses of tax revenues; create an exemption from certain election requirements; and provide that if an exemption from election requirements applies, a county, city, or town shall obtain approval to impose the tax from the county, city, or town legislative body.

The bill amends a local option sales and use tax for airports, highways, and public transit by providing and modifying definitions; allowing a city or town within a county of the second class to impose the tax in addition to a county of the second class under certain circumstances; modifying the purposes for which tax revenues may be expended, including providing that certain cities and towns may expend up to all of the revenues collected from the tax for certain airport facilities; addressing certain notice requirements for a city or town imposing the tax; and addressing procedures for the State Tax Commission to distribute tax revenues.

Finally, the bill addresses the expenditure of revenues deposited into the Local Transportation Corridor Preservation Fund if those revenues are allocated to a city or town that imposes the local option sales and use tax for airports, highways, and public transit. It also addresses the expenditure of revenues deposited into the County of the Second Class State Highway Projects Fund if those revenues are deposited for or allocated to a city or town that imposes the local option sales and use tax for airports, highways, and public transit.

DRIVER LICENSE SANCTIONS AND SENTENCING REQUIREMENTS FOR DRIVING UNDER THE INFLUENCE AND ALCOHOL RELATED OFFENSES

SB 272

SEN. SCOTT JENKINS

PAUL BOYDEN'S PORTION

As part of the negotiated compromise regarding alcohol laws in the state of Utah this bill was filed and run at the end of the legislative session. It was the personal pet project of Senate President Michael Waddoups. It had no public hearings. It passed the senate before any interested parties were able to deal with it. Thereafter SWAP, the Sentencing Commission and the DUI Sub-Committee met with President Waddoups and made some modifications to the bill.

This is the moderated version (really)!

Changes Regarding Drivers 21 years and Older

For drivers 21 years of age and older 41-6a-509 was amended to lengthen the driver license suspension for DUI from 90 days to 120 days. This applies only to offenses committed on or after July 1, 2009.

For repeat offenders, the revocation period was extended from 1 year to 2 years. That of course applies to a person with a prior conviction within 10 years of the commission of the current offense. Again the current offense must be committed on or after July 1, 2009. The

suspension/revocation periods were also extended under 41-6a-517 Driving with any Measurable Controlled Substance in the Body. Again a first offense was lengthened from a 90 day suspension to 120 days and a repeat offender's revocation was extended from 1 year to 2 years.

Interlock requirements are now extended to first offenders. Under 41-6a-518.2 a first offender is interlock restricted for 18 months from the date of conviction. This should have a serious impact on the interlock provider industry. When the provisions of this bill are combined with Senate Bill 12, a person who fails to comply with probation and has an impaired driving entry changed to driving under the influence, that person's interlock restrictions will be started as of the date the DUI conviction is entered. A pretty serious consequence.

Revocation for refusal remains at 18 months, but revocation for a subsequent refusal is extended from 24 months to 36 months. That modification is found in 41-6a-521.

The suspension of 120 days for first offenders and the revocation for 2 years for repeat offenders also applies to the "per se" suspension.

JACEY SKINNER'S PORTION

For those under the age of 21 who are convicted of or adjudicated for a driving under the influence offense their license will be suspended until they are 21 years old or for 120 days with an 18 month interlock restriction, whichever is longer. For conviction for a second or subsequent DUI conviction, the suspension period is until they are 21 or 2 years, which ever is longer.

For a refusal for those under the age of 21 the suspension is until they are 21 or 18 months, which ever is longer, for a first refusal, or until they are 21 or 36 months, whichever is longer, for a second offense.

For those under the age of 21 convicted or adjudicated for a non-driving alcohol related offense, the suspension period is 1 year for a first offense. However, during that year, the judge may reinstate the license at any time if the minor completes an alcohol education series. For a second offense, the suspension period is 2 years and the minor is required to complete an alcohol education series and may be ordered to undergo a drug and alcohol evaluation.

HONORING THE UTAH LAW ENFORCEMENT MEMORIAL

SJR 9

Sen. Jon Greiner

The Utah Law Enforcement Memorial Foundation raised an astonishing amount of money and spent thousands of hours of research, public outreach, and promoting construction of a fitting memorial to honor the more than 130 officers who gave their lives in the line of duty. Ogden Police Chief and Senator Jon Greiner and Representative Eric Hutchings advanced this joint resolution to honor the efforts of the Memorial Foundation Board of Directors and to recognize the Utah Law Enforcement Memorial Foundation as the guardians and caretakers of the Memorial. Consider taking your family for a quiet evening or weekend afternoon visit. It is truly a place of peace and honor.

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